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# SCOPE NOTE 46

## Pharmacists and Conscientious Objection

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In March 2005, a Wisconsin pharmacist's act of conscience garnered headlines across the United States. After a married woman with four children submitted a prescription for the morning-after pill, the pharmacist, Neil Noesen, not only refused to fill it, but also refused to transfer the prescription to another pharmacist or to return the prescription to the customer. As more such incidents occurred, many states ". . . decided to consider and enact laws setting the bounds of pharmacists' and other health care workers' professional obligations" (III, Grady 2006, p. 327). Discussions of objector legislation, also referred to as "conscience clauses," "refusal clauses," and "abandonment laws" (III, Appel 2005, p. 279), are not limited to professional ethics, but also draw from philosophical, theological, and legal perspectives. The purpose of this Scope Note is to present a wide variety of viewpoints on the health provider's right to conscience.

More than 40 years ago the development of "The Pill" as the first reliable method of birth control not only ushered in a feminist revolution, but also provided a new focus for concerns of conscience for those who were part of the anti-abortion movement based on religious belief in the sanctity of life. Similarly, in the past ten years, worldwide, and seven years (1999) since the emergency contraception "morning after" pill first became available as a prescription item, there has been an upsurge in the number of medical personnel who refuse to prescribe or dispense it on grounds of personal conscience, whether for religious reasons or not. Their actions

bring into play issues of power and control for health care personnel and for patients—in this case women, which also raises women’s rights issues. Ironically, studies in France, Sweden, and the United Kingdom have shown that emergency contraception does not reduce the abortion rate—it is too infrequently used (II, Glasier 2006).

It is important to underline the difference between the “morning-after” pill or “Plan B,” which is made up of two progestin pills containing levonorgestrel (a synthetic derivative of the female hormone progesterone), and RU-486 (Mifiprex or mifipristone with misoprostol). Plan B, if taken within 72 hours post-coitus prevents implantation, and therefore pregnancy, by suppressing the output of luteinizing hormone, the hormone that triggers the ovulation process. Scientists have been unable to determine whether this action could destroy already fertilized eggs, but even if it does, it uses the same mechanism as occurs with the birth control pill, that was developed some 45 years ago. By contrast, RU-486 acts up to 49 days after implantation by blocking the action of progesterone in order to terminate the pregnancy and as such is an abortifacient (II, US FDA 1).

On 24 August 2006, the U.S. Food and Drug Administration announced approval of the Plan B pill for over-the-counter (OTC) sales (II, US FDA 2). Although this action makes the drug more widely available, it remains to be seen whether pharmacists who are conscientious objectors and who refuse to dispense it also will refuse to provide it OTC.

A survey article by Rebecca Dresser (II, 2005, p. 9) succinctly sums up the problem for conscientious objectors: “Because emergency contraception can act to block implantation of a fertilized egg, people who believe in protection of human life after conception find it morally objectionable.”

When conscientious objections are raised over abortion or birth control services performed, prescribed, or dispensed, they affect not only the

health professionals—physicians, pharmacists, nurses, and health technicians—who may object, as well as their colleagues and/or managers, but also the consumers: the female patients who are then forced to reconsider or to seek an alternative supplier, as well as their spouses or partners. Alta Charo (II, 2005, p. 2473) makes the point that the patient needs to have access to a system of counseling and referral “so that every patient can act according to his or her own conscience just as readily as the professional.”

The literature and online resources cited below include (1) policy statements and codes by professional organizations; (2) review essays on conscientious objection in health care and articles on the current debate regarding the field of pharmacy; and (3) legal perspectives and cases.

## I. OFFICIAL POSITION STATEMENTS AND CODES

American Pharmacists Association (APhA). Code of Ethics for Pharmacists. Washington, DC: APhA. 27 October 1994. 2 p. [Online.] Available at <http://www.aphanet.org/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=2809>. Accessed 20 October 2006.

Eight principles and interpretation include “[a] pharmacist respects the autonomy and dignity of each patient” and “[a] pharmacist promotes the good of every patient in a caring, compassionate, and confidential manner.” This Code also was endorsed and reviewed by the American Society of Health-System Pharmacists [ASHP] in June 1996 and 2002, respectively (see [http://www.ashp.org/bestpractices/ethics/Ethics\\_End\\_Code.pdf](http://www.ashp.org/bestpractices/ethics/Ethics_End_Code.pdf), accessed 20 October 2006).

American Medical Association (AMA). AMA Policy Finder. Chicago, IL: American Medical Association, ongoing. [Online.] Available at <http://www.ama-assn.org/go/policyfinder>. Accessed 19 October 2006.

The AMA has no single statement on conscientious objection but addresses its various facets and issues through a combination of policy documents, which can be accessed through its Policy Finder. Documents include the AMA Code of Medical Ethics, its Principles and Opinions, Opinion E-9.12 “Patient-Physician Relationship: Respect for Law and Human Rights” (updated 1994), Opinion E-10.05 “Potential Patients,” and Policy H-296.896 “Conscience Clause: Final Report” (1998—for medical students.) Proceedings of the AMA House of Delegates also provide additional information. As a detailed example, Policy D-120.975 (2005), “Preserving Patient’s Ability to Have Legally Valid Prescriptions Filled,” indicates the AMA’s resolve to work with state medical societies and relevant associations to ensure that patients receive an immediate referral to another dispensing pharmacy if a pharmacist makes a conscientious refusal to fill. It also states that, in the absence of other remedies, the AMA plans to seek state legislation to permit physicians to dispense medication to their own patients if no pharmacist within a 30 mile radius will do so.

American Pharmacists Association (APhA). *Pharmacists & Physicians: Not Just a Matter of Conscience*. Statement by John A. Gans, Executive Vice President and CEO APhA, 23 June 2005. [Online.] Available at <http://www.aphanet.org/AM/Template.cfm?Section=Search&section=June6&template=/CM/ContentDisplay.cfm&ContentFileID=686> Accessed 14 November 2006.

Responding to the AMA’s June 2005 policy statement regarding patients’ rights to have legally valid prescriptions filled, Gans reiterates the APhA’s policy that “supports the ability of the pharmacist to step away from participating in an activity to which they have personal objections—but not to step in the way.” He says that seamless systems exist due to the efforts of individual pharmacists and pharmacies, and their ongoing collaboration with physicians, such that most patients receive their prescriptions without being aware of a

pharmacist’s choice to step away.

American Pharmacists Association (APhA). *APhA Statement on FDA’s Recent Approval of Plan B or OTC Status*. 24 August 2005. 1 p. [Online.] Available at <http://www.aphanet.org/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=6569> Accessed 14 November 2006.

APhA “applauds” the FDA’s decision because it expands access to medications in a way that is safe and provides individuals with access to pharmacists able to answer questions about emergency contraception. This statement also outlines the novel approach in nine states in which women under 18 can seek information and emergency contraception directly from pharmacists.

American Society of Health-System Pharmacists (ASHP). *Pharmacist’s Right of Conscience and Patient’s Right of Access to Therapy*, Policy No. 0610. [Online.] Available at [http://www.ashp.org/bestpractices/ethics/Ethics\\_Positions.pdf](http://www.ashp.org/bestpractices/ethics/Ethics_Positions.pdf). Accessed 20 October 2006.

Recognizing the right of pharmacists and other pharmacy employees not to participate “in therapies they consider to be morally, religiously, or ethically troubling,” this policy also supports systems that protect the patient’s right to obtain legally prescribed treatments and reasonably accommodate rights of conscience. Pharmacists must be respectful of patients and make referrals without trying to impose their views on patients.

Canadian Healthcare Association (CHA), Canadian Medical Association (CMA), Canadian Nurses Association (CNA), and Catholic Health Association of Canada (CHAC). *Joint Statement on Preventing and Resolving Ethical Conflicts Involving Health Care Providers and Persons Receiving Care*, 1998 December 4-5; 4 p. [Online.] Available at [http://www.cna-aiic.ca/CNA/documents/pdf/publications/prevent\\_resolve\\_ethical\\_conflict\\_e.pdf](http://www.cna-aiic.ca/CNA/documents/pdf/publications/prevent_resolve_ethical_conflict_e.pdf). Accessed 26 September 2006.

All health care organizations ought to have a conflict resolution policy in place that incorporates the 12 elements identified in the joint statement in ways appropriate for the health care setting and the situation. Elements involve gathering those in conflict together with facilitation and outside resources if necessary. Health care providers who cannot support the decision made should be allowed “to withdraw without reprisal from participation in carrying out the decision, after ensuring that the person receiving care is not at risk of harm or abandonment.”

Canadian Pharmacists Association (CHA). CHA Guidelines for the Provision of Plan B (levonorgestrel 0.75 mg) as a Schedule II Product, 2003. Available at [http://www.pharmacists.ca/content/about\\_cpha/whats\\_happening/cpha\\_in\\_action/pdf/ECP\\_CPhAGuidelinesforProvisionECPasSchII.pdf](http://www.pharmacists.ca/content/about_cpha/whats_happening/cpha_in_action/pdf/ECP_CPhAGuidelinesforProvisionECPasSchII.pdf). Accessed 8 November 2006.

As of 19 April 2005, Plan B is available to women directly from a pharmacist without a physician’s prescription as a Schedule II or behind the counter product. The 2003 guidelines still serve “as a template that pharmacists can use or adapt, in conjunction with other training and support materials to conduct individual consultations with women requesting emergency contraception” (p. 1).

Christian Medical & Dental Society. Healthcare Right of Conscience: Protecting the Freedom to Heal. [Online.] Available at <http://www.cmawashington.org/index.cgi?CONTEXT=art&art=2183&BISKIT=8598249> Accessed 6 November 2006.

This statement links the Hippocratic Oath with Judeo-Christian principles, and holds that adherence to these values is the basis of medical professionalism.

Royal Pharmaceutical Society of Great Britain. Codes of Ethics. Available at <http://www.rpsgb.org.uk/protectingthepublic/ethics/>. Accessed 18 October 2006.

“Consultation on the Structure of the Revised

Code of Ethics for Pharmacists and Pharmacy Technicians,” dated June 2006, looks at the RPS Code of Ethics and Standards, now under review by the Society. The document advises pharmacists to “ensure your professional judgment is not impaired by personal or professional interests, incentives, targets or similar measures; declare any personal or professional interests to those who may be affected;” and “ensure that, if you have a conscientious objection to particular services, this is clearly known by your patients and employer, and have in place the means to make a referral to another relevant professional within an appropriate time frame.” [See also II. Bramstedt 2006; Balmer 2006.]

## II. GENERAL LITERATURE

Benn, Piers. The Role of Conscience in Medical Ethics. In *Philosophical Reflections on Medical Ethics*, ed. Nafsika Athanassoulis, pp. 160-79. Basingstoke [England]/New York: Palgrave/Macmillan, 2005.

After reviewing philosophical arguments on conscience from Thomas Aquinas to Richard M. Hare, the author focuses on conscientious refusal in the health care context. Contrasting a doctor who objects to performing abortions with a doctor who refuses to provide pain relief, Benn posits that “. . . [t]he question of whether to allow conscientious objection may well turn on whether the ethical position of the doctor or nurse connects intelligibly with the core values of medicine” (p. 177). The chapter concludes with a discussion of the “. . . fact of reasonable pluralism—that when well-informed and well-intentioned people disagree about [an issue of conscience], laws and institutions should not take extreme stances” (pp. 177-78).

Bramstedt, Katrina A. When Pharmacists Refuse to Dispense Prescriptions. *Lancet* 367(9518): 1219-20, 15-21 April 2006.

In this comment piece, the author states that “the question of what constitutes a moral

objection is a valid one” and points out that legalizing the refusal to prescribe emergency contraception may be a precedent for allowing objections to other drugs prescribed for other reasons, such as, for example, human growth hormone for short stature. She discusses the situation in Illinois, where a state law that aims to deal with current refusals to dispense emergency contraception shifts the duty to dispense from the individual pharmacist to the pharmacy as a business.

Balmer, Lynsey. Royal Society of Pharmacists and Conscientious Objectors. [Letter, Reply] *Lancet* 367(9527):1980, 17 June 2006. [See I. Royal Pharmaceutical Society of Great Britain 2006.]

Brodsho, Kelsey C. Patient Expectations and Access to Prescription Medication Are Threatened by Pharmacist Conscience Clauses. *Minnesota Journal of Law, Science & Technology* 7(1): 327-36, December 2005.

Brodsho asserts that the professional duties of the physician are distinct from those of the pharmacist, because the central patient-provider relationship is between physician and patient. The physician creates and develops a treatment plan with the patient; the pharmacist is one of possibly many health providers who effectuates an established plan. “[T]he needs of the patient must trump the pharmacist’s moral objection” (p. 331).

Cahill, Judith A.; Maddux, Michael S.; Gans, John A.; and Manasse, Henri R. Pharmacist Critique Woefully Outdated and Uninformed. Available online from the Academy of Managed Care Pharmacy. Statement from AMCP; American College of Clinical Pharmacy; American Pharmacists Association; American Society of Health-System Pharmacists at [http://www.amcp.org/data/nav\\_content/Letter%20to%20the%20Editor%20%2D%20OBGYN%20final%2Epdf](http://www.amcp.org/data/nav_content/Letter%20to%20the%20Editor%20%2D%20OBGYN%20final%2Epdf). Accessed 28 September 2006.

Cahill and her colleagues attack the critique by Wall and Brown (see below), calling it “mixing

apples with oranges,” and argue that pharmacists are professionals skilled in taking medication histories and giving medication advice, not merely dispensing.

Canadian Pharmaceutical Association letter to the Canadian Medical Association, 8 December 2006. Available at [http://www.pharmacists.ca/content/about\\_cpha/Whats\\_Happening/CPhA\\_in\\_Action/pdf/CMAJECP\\_CPhADec8-05.pdf](http://www.pharmacists.ca/content/about_cpha/Whats_Happening/CPhA_in_Action/pdf/CMAJECP_CPhADec8-05.pdf). Accessed 2 November 2006.

The Canadian Pharmaceutical Association protested in this letter what they saw as the CMAJ’s “need to create controversy at the expense of another health profession.” They state that “[O]n December 6, CMAJ dedicated two full pages to present its position that pharmacists’ services are not professional or kept confidential, and that pharmacists should not be paid for the services they provide (CMAJ 2005, 173(12): 1435-36).” They added that the CMAJ’s “editorial position last April regards the consultation a pharmacist provides regarding emergency contraception (EC) as subjecting women to ‘. . . fair game for unwanted questioning and unsought advice—at their own expense’ and refers to ‘. . . a lingering paternalism in matters affecting women’s reproductive health . . . still hiding behind the counter’ (CMAJ 2005, 172(7): 845). These two articles certainly come across as part of a continued campaign by CMAJ against pharmacists.” A chronology entitled “CHA Takes Action: Emergency Contraception” can be found at [http://www.pharmacists.ca/content/about\\_cpha/whats\\_happening/cpha\\_in\\_action/emerger\\_contra.cfm](http://www.pharmacists.ca/content/about_cpha/whats_happening/cpha_in_action/emerger_contra.cfm). Accessed 2 November 2006. (See also Eggertson and Sibbald 2005 below.)

Cantor, Julie, and Baum, Ken. The Limits of Conscientious Objection: May Pharmacists Refuse to Fill Prescriptions for Emergency Contraception? *New England Journal of Medicine* 351(19): 2008-12, 4 November 2004.

Although noting that “. . . [f]ormer Supreme Court Chief Justice Charles Evans Hughes called the quintessentially American custom of

respect for conscience a “happy tradition” (p. 2012), the authors depict the serious consequences of conscientious refusal for both health care providers and patients before presenting arguments on both sides of the issue.

CBS News. The Early Show: Health-Watch: “Are Pharmacists Right to Choose? Debate over Letting Them Refuse to Provide Birth Control Pills,” 29 March 2005. [Online.] Available at <http://www.cbsnews.com/stories/2005/03/29/earlyshow/health/main683753.shtml>. 7 November 2006.

Karen Pearl, President of Planned Parenthood, and Karen Brauer, President of Pharmacists for Life International, discuss their opposing views on the right of pharmacists to refuse to fill prescriptions for birth control. Viewers can link to a related video on “Druggists’ Right to Choose” in which Steven H. Aden of the Christian Legal Society also appears.

Charo, R. Alta. The Celestial Fire of Conscience: Refusing to Deliver Medical Care. *New England Journal of Medicine* 352(24): 2471-73, 16 June 2005.

Echoing Ellen Goodman’s description of refusal clauses as “conscience without consequence,” the author sees the conscience clause argument as a subset of the current debate about what it means to be a health care professional. Charo notes that “[w]ith autonomy and rights as the preeminent social values comes a devaluing of relationships and a diminution of the difference between [health care providers’] personal lives and our professional duties” (p. 2472). The author proposes that “. . . a genuine system for counseling and referring patients [be put] in place, so that every patient can act according to his or her own conscience just as readily as the professional can” (p. 2473).

Chervenak, Frank A., and McCullough, Laurence B. A Group Practice Disagrees about Offering Contraception. *American Family Physician* 65(6):1230, 1233, 15 March 2002. [Online.] Available at <http://www.aafp.org/afp/20020315/curbide.html>. Accessed 6 November 2006.

The authors discuss a case in which the pro-life

beliefs of some physicians in a group practice are adopted as the standard of care for the practice as a whole. Chervenak and McCullough detail the implications of this decision for informed consent and physician-patient relations and describe other options for addressing issues of conscience in clinical care.

Davis, John K. Conscientious Refusal and a Doctor’s Right to Quit. *Journal of Medicine and Philosophy* 29(1): 75-91, 2004.

Davis argues that a doctor may refuse to treat a patient who requests a procedure the doctor finds morally objectionable only if quitting the physician-patient relationship leaves the patient “not worse off than she would have been if she had not gone to that doctor in the first place” (p. 75). He addresses the duty to refer, moral counseling from a physician, whether the doctor should provide these services if no other physician is available, moral consensus among physicians, and the responsibility of a doctor to stay out of fields where the standard of care includes objectionable procedures.

Dowling, Katherine, and Sonfield, Adam. Should Pro-Life Health Providers Be Allowed to Deny Prescriptions on the Basis of Conscience? In *Taking Sides: Clashing Views in Health and Society*, 7th ed., ed. Eileen L. Daniel, pp. 242-54, Dubuque, IA: McGraw Hill, 2006. 393 p.

Dowling, a physician, describes the reactions she receives from other health professionals when expressing her pro-life positions and acting on her right to conscientious refusal. Sonfield, a journalist, focuses on the harm to patients that can result when health professionals invoke the right to conscience.

Dresser, Rebecca. Professionals, Conformity, and Conscience. *Hastings Center Report* 35(6): 9-10, November-December 2005.

Dresser enumerates five models for handling conflicts over conscientious objection by health professionals: the contract; the duty to refer to another health professional; the obligation to perform certain treatments as part of the profession’s basic standards; the “draft board”;

and the compromise. The drawbacks of each are enumerated. She writes “many laws protect health professionals from employment penalties if they refuse to assist with abortion or sterilization procedures” (p. 9). She goes on to add that other laws allow professionals to refuse to perform such actions as forgoing life-sustaining treatment, giving “futile” treatment, supplying life-ending medication (Oregon), doing prenatal diagnosis (in the interests of disability rights) or sex selection, administering infertility treatment, procuring cadaver organs, or using animals in education or research.

Eggertson, Laura, and Sibbald, Barbara. Privacy Issues Raised over Plan B: Women Asked for Names, Addresses, Sexual History [news]. *CMAJ/JAMC: Canadian Medical Association Journal* 173(12): 1435-36, 6 December 2005.

Although not a case of conscientious objection to dispensing of Plan B (levonorgestrel), a situation that may have hindered its availability in Canada arose in April 2005, after it changed from being a prescription drug to a behind-the-counter medication. The Canadian Pharmacists Association (CHA) posted guidelines for pharmacists online ([www.pharmacists.ca](http://www.pharmacists.ca)) on distributing the drug, including instructions on the need to counsel women and a form to guide this counseling. A counseling fee—e.g., \$25 a pill—could be charged, although it is not clear that Canada’s public health system would pay for it. Following a CHA complaint to the CMA about the above CMAJ news story while it was under preparation, the editors were instructed by a CMA executive to suppress the details of the stories the journalists had gathered from 13 women from across Canada, who had gone to their local pharmacist to request emergency contraception and experienced frustrating effects resulting from the guidelines. A subsequent editorial on editorial autonomy of the CMAJ presumably led to the “without cause” dismissal of the CMAJ editor, Dr. John Hoey, and the Senior Deputy Editor, Anne Marie Todkill, as well as the resignations of

other CMAJ journalists. The controversy can be followed by Letters to the Editor that cite the original story in the online edition available at <http://www.cmaj.ca/cgi/content/full/173/12/1435>, and by a chronology by Barbara Sibbald available at <http://www.caj.ca/mediamag/awards2006/pages/Magazine.htm>. (Both accessed 2 November 2006) (See also above: Canadian Pharmaceutical Association letter to the Canadian Medical Association, 8 December 2006.)

Fenton, Elizabeth, and Lomasky, Loren. Dispensing with Liberty: Conscientious Refusal and the “Morning-After Pill.” *Journal of Medicine and Philosophy* 30(6): 579-92, December 2005.

The authors argue that, although “the liberty of conscientious refusal grounds a strong moral claim” and five arguments for requiring pharmacists to fill prescriptions can be defeated, nevertheless, “moral equality does not obtain,” because “the pharmacist is in a privileged position vis-à-vis potential clients.” However, they use the economics “Theory of Second Best” to suggest that the best compromise between conscientiously-objecting pharmacists and their clients—women seeking emergency contraception—could be “a geographically restricted policy of requiring prescription fulfillment.”

Furton, Edward J. Vaccines and the Right to Conscience. *National Catholic Bioethics Quarterly* 4(1): 53-62, Spring 2004.

Furton discusses the ramifications of broader interpretations of exercising one’s right to object to medical procedures, even if participation is mandated by state legislation. Seeking an exemption to state mandated vaccinations for their children, parents argue an appeal to conscience. The argument is grounded in their rejection of the use of tissue from aborted fetuses which are reputed to be the source of tissue used by researchers and pharmaceutical companies for the creation and production of vaccines. “Can this appeal for an exemption be valid when there is no specific

Catholic teaching on this topic?” (p. 54). Furton argues that the facts of the development and production of vaccines are unfortunate, but the burden to act in good conscience is on the researchers and drug producers, rather than the parents. Citing the continuum of moral theology from Aquinas to Pope John Paul II, Furton maintains that justice for the most vulnerable prevails over the conscience of the parents. Protecting the children, born and unborn, from these dangerous diseases is more compelling than disassociating oneself from abortion, no matter how remote the connection. In this instance, seeking an exemption to the rule is not justified by the conscience of the individual parent.

Glasier, Anna. Emergency contraception. [Editorial.] *BMJ: British Medical Journal* 333(7568): 560-61, 16 September 2006.

Glasier editorializes on the effectiveness of emergency contraception in reducing abortion rates in Sweden, France, and the U.K., where it has been used for 10 years. Only small proportions of women undergoing abortion have claimed to have used emergency contraception in the past—the greatest being 12 percent, in the U.K. However, in Sweden and the U.K., the abortion rate actually has increased in the last 10 years.

Greenberger, Marcia D., and Vogelstein, Rachel. Pharmacist Refusals: A Threat to Women’s Health. *Science* 308(5728): 1557-58, 10 June 2005. [Online.] Available at <http://www.sciencemag.org/cgi/reprint/308/5728/1557.pdf>. Accessed 20 October 2006.

In a “Policy Forum” piece, the authors, who are with the National Women’s Law Center, review legal and professional standards for pharmacists in the United States and recommend that “women . . . be provided timely access to prescription medication” (p. 1558).

Imbody, Jonathan. Doctors in the Lion's Den. *Today's Christian Doctor: The Journal of the Christian Medical & Dental Society* 32(3):19-23, Fall 2001.

The author asserts that the December 2000 decision of the Equal Employment Opportunity Commission (EEOC) holding that health insurance coverage for contraception is a civil right violates health care providers’ ability to refuse to prescribe contraception as their human right. The article includes the Christian Medical & Dental Society position statement “Protecting the Freedom to Heal,” which observes that “. . . many within the medical and scientific communities appear to be moving further away from . . . absolute values and truth. The resulting clash of values has made professionals who hold [such values] vulnerable to discrimination, ostracism and punishment” (p. 22).

Manasse, Henri R., Jr. Conscientious Objection and the Pharmacist. *Science* 308(5728): 1558-59, 10 June 2005. [Online.] Available at <http://www.sciencemag.org/cgi/reprint/308/5728/1558.pdf>. Accessed 20 October 2006.

Manasse, the executive vice president of the American Society of Health-System Pharmacists, views the extreme actions of some pharmacists and the equally extreme reactions of some policymakers as “not the appropriate answer to the dilemma we face” (p.1559). He suggests a variety of solutions to address the problem.

May, Thomas. Conscience, Rights of. In *Encyclopedia of Bioethics*, 3d ed., ed. Stephen G. Post, vol. 1, pp. 517-19. New York: Macmillan Reference USA/Thomson/Gale, 2004.

Calling matters of conscience “. . . a balancing of autonomy rights and social harm,” May delineates the conditions that must exist for the legitimate exercise of a right to conscience.

National Public Radio (NPR), Programs Archive. Washington, DC, multiple dates. [Online.] Available at <http://www.npr.org>. Accessed 23 October 2006.

NPR has broadcast a number of audio programs related to the emergency contraceptive called Plan B, or “the morning after pill,” and issues of conscience for pharmacists and nurses. These

programs, which can be accessed free online, range from brief news reports to extended online discussions of the topic, such as “News and Notes” with Ed Gordon, 31 March 2005 (16:41), and “Talk of the Nation: Pharmacists and Contraceptive Prescriptions,” 7 April 2005 (29:40). Search for pharmacists, conscience, Plan B, Alabama nurses, etc. Additional information and links are sometimes provided.

Pellegrino, Edmund D. The Physician’s Conscience, Conscience Clauses, and Religious Belief: A Catholic Perspective. *Fordham Urban Law Journal* 30(1): 221-44, November 2002.

Within a symposium volume on religious values and legal dilemmas in bioethics, Pellegrino sets physician conflict of conscience within the larger context of changes in America’s democratic and pluralistic society and society’s understanding and structuring of its medical system and care providers. Drawing on Aquinas, Pellegrino describes how, for a Catholic, conscience is divinely inserted so that “to ignore, repress, or act against conscience for any reason is a violation of philosophical as well as theological ethics, an error in moral agency and a sin against God” (pp. 227-28). Pellegrino states that society is obliged to protect both physician and patient conscientious objection, without empowering one over the other. He rejects as unsatisfactory the common proposals to resolve or limit conflicts of conscience, namely, he argues that physicians cannot separate or rank their professional and personal commitments because such a value dichotomy is incompatible with personal integrity; physicians cannot refrain but refer to another physician because doing so would be to cooperate in a morally wrong act; and the practice, study, or provision of health care by a Catholic (or other religious) physician or hospital cannot be circumscribed without a loss to society. Therefore, “the only ethically viable course for the religious physician is to maintain fidelity to moral integrity and dictates of conscience while practicing in a secular world” (p. 242). Physicians must inform their patients of what they can and cannot in good conscience

do before any crisis occurs. Although conscience cannot be compromised even in an emergency or when provider choice is limited, a physician must care for a patient until a referral or transfer can be arranged by the patient, a family member, or social services and must always “treat her patients with respect, avoid moralizing condemnations, explain reasons for her moral objections . . . and recognize that not all matters of conscience are of equal gravity” (p. 243).

Savulescu, Julian. Conscientious Objection in Medicine. *BMJ: British Medical Journal* 332(7536): 294-97, 4 February 2006.

Savulescu offers that not allowing conscientious objection constrains the liberty of the health care professional. Nevertheless, he marshals more arguments against it: the inefficiency, inequity, and inconsistency of services offered; the questions it raises about the commitment of a doctor to his or her specialty of medical care; and the specter of discrimination, religious vs. secular. He suggests that “doctors who claim it [conscientious objection] should be prepared to refer the patient to someone else who can perform the services in a timely manner” and adds that “if people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors.” (Savulescu’s article stimulated much discussion, posted at the Rapid Responses section of BMJ’s website, available at: <http://bmj.bmjournals.com/cgi/eletters/332/7536/294#127992>. Accessed 6 November 2006.)

Swartz, Martha S. “Conscience Clauses” or “Unconscionable Clauses”: Personal Beliefs Versus Professional Responsibilities. *Yale Journal of Health Policy, Law, and Ethics* 6(2): 269-350, Summer 2006.

Swartz argues that because medical professionals essentially are granted monopolies due to state licensing regulations, they should be precluded from injecting personal beliefs into professional practice. Thus she

distinguishes professional integrity based on medical ethics from personal morality for two reasons: one, protection of patient access to health care, and two, implementation of the fiduciary obligation health care professionals owe to patients. She concludes that by doing this, patients will have increased trust in health care and the health care system.

[US FDA 1.] U.S. Food and Drug Administration. Center for Drug Evaluation and Research. Drug Information: Mifeprex (mifepristone) Questions and Answers. August 2005. Available at <http://www.fda.gov/cder/drug/infopage/mifepristone/mifepristone-qa.htm> and 10 April 2006 update at <http://www.fda.gov/cder/drug/infopage/mifepristone/default.htm>. Both accessed 16 October 2006.

[US FDA 2.] U.S. Food and Drug Administration. Center for Drug Evaluation and Research. Drug Information. FDA Approves Over-the-Counter Access for Plan B for Women 18 and Older, Prescription Remains Required for Those 17 and Under. 24 August 2006. Available at <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html>. Accessed 7 November 2006.

Wall, L. Lewis, and Brown, Douglas. Refusals by Pharmacists to Dispense Emergency Contraception: A Critique. [Current Commentary.] *Obstetrics & Gynecology* 107(5): 1148-51, May 2006.

In a controversial article that drew strong replies from pharmacists, the authors contend that pharmacists should not be permitted “[to exercise their] personal opinions and values [in dispensing] medications to patients” since “[emergency] contraception does not interfere with an implanted pregnancy and therefore does not cause abortion” and “because pharmacists do not control the therapeutic decision to prescribe medication.” In addition, “pharmacists at the counter . . . [are not trained to] make clinically sound ethical decisions” since they lack “access to the patient’s complete medical background . . . [and] do not understand the context in which the patient’s clinical problem

is occurring.” (See Cahill et al. (above) for a reply.)

Wicclair, Mark R. Pharmacies, Pharmacists, and Conscientious Objection. *Kennedy Institute of Ethics Journal* 16(3): 225-50, September 2006.

Noting that “. . . the recognized principle that physicians are not obligated to participate in practices that violate their ethical beliefs is limited by obligations to the ill, such as a duty to provide medically indicated emergency care . . .” (p. 240), Wicclair holds that pharmacists who refuse to fulfill and/or transfer prescriptions for emergency contraception have crossed the line “. . . from [conscientious] objection to obstruction . . .” (p. 242).

Winckler, Susan C., and Gans, John A. Conscientious Objection and Collaborative Practice: Conflicting or Complementary Initiatives? *Journal of the American Pharmacists Association* 46(1): 12-13, January-February 2006.

Winckler and Gans discuss the relationship of conscience clauses and collaborative practice agreements in relation to prescribing and dispensing emergency contraceptives by pharmacists, arguing that they complement rather than conflict with each other. Conscience clauses allow pharmacists to opt out of activities to which they morally object while the collaborative practices ensure patient access to legally prescribed emergency contraceptives.

Wood, Susan F. The Role of Science in Health Policy Decisionmaking: The Case of Emergency Contraception. The Oliver C. Schroeder, Jr., Scholar-in-Residence Lecture, Case Western Reserve University School of Law; 27 September 2006. Webcast available at <http://law.case.edu/lectures>. Accessed 20 October 2006.

Wood, former Assistant Commissioner for Women’s Health and Director of the Food and Drug Administration Office of Women’s Health, addresses the following questions: Was clinical and scientific evidence ignored in deliberations concerning approval of Plan B emergency contraception as an over-the-counter drug? What impact do the decisions of the Food

and Drug Administration have on women and families? And what impact do they have on its own credibility?

Zellmer, William A., and American Society of Health-System Pharmacists. *The Conscience of a Pharmacist: Essays on Vision and Leadership for a Profession*. Bethesda, MD: American Society of Health-System Pharmacists, 2002.

Editorials published in the *American Journal of Health-System Pharmacy* from 1978 to 2000 focusing on professionalism in pharmaceutical practice comprise this collection of reprints.

### III. LEGAL PERSPECTIVES AND CASES

Appel, Jacob M. Judicial Diagnosis: “Conscience” vs. Care: How Refusal Clauses are Reshaping the Rights Revolution. *Medicine and Health, Rhode Island* 88(8): 279-81, August 2005. [Online.] Available at <http://www.rimed.org/documents/RIMedAugust2005.pdf>. Accessed 6 November 2006.

Appel describes how refusal legislation which “. . . once seemed benign to many pro-choice lawmakers—and to some a crucial part of the personal freedom championed by civil libertarians” is “. . . now shielding insurance companies and major hospital networks” (pp. 279-80). Cautioning that “[t]he door opened by refusal legislation may prove wider than many advocates imagined” (p. 280), the author suggests that standard care, such as the implementation of advance directives and the care of HIV-infected patients, could be denied by providers invoking their right to conscience.

Bleich, J. David. The Physician as Conscientious Objector. *Fordham Urban Law Journal* 30(1): 245-65, November 2002.

Bleich first argues that conscientious objection merits serious consideration despite the loss of respect for the role of religion in society and in individual lives and a general ignorance of the historical and practical reasons behind the

principle of religious freedom. He then describes the existing legal commentary on physician conscientious objection using a series of cases. Bleich concludes that further legislative action could help clarify both protection for physicians and their obligations toward patients.

Collins, Mary K. Conscience Clauses and Oral Contraceptives: Conscientious Objection or Calculated Obstruction? *Annals of Health Law* 15: 37-60, Winter 2006.

Collins traces the scientific and religious bases or the state conscience clause legislation. She discusses the rights of the health care provider and the health care consumer before examining areas where those rights can be compromised and reconciled.

Davey, Monica, and Belluck, Pam. Pharmacies Balk on After-Sex Pill and Widen Fight; Right of Refusal Cited; Many States Take up the Issue, Citing Religious and Moral Concerns. *New York Times* (19 April 2005): A1, A16.

In this front page story, reporters Davey and Belluck focus on the wide range of state and federal responses to the controversial morning-after pill and the refusal of some pharmacists to fill such prescriptions. The story continues with a discussion of the legislative landscape in various states and includes a map identifying states with legislation either enacted or pending that would either limit or promote accessibility of the morning-after pill. (See also Kreisler below.)

Dickens, Bernard M. Ethical Misconduct by Abuse of Conscientious Objection Laws. *Medicine and Law: The World Association for Medical Law*, 25(3): 513-22, September 2006.

Dickens begins by distinguishing conscientious objection (refusal to undertake a legal act) from civil disobedience (refusal to act in compliance with mandatory public law). The overlap occurs when health care providers refuse to refer patients to alternatives for lawful health care services, thus defying private laws that protect a patient’s right to care. He compares balanced

laws on conscientious objection in Britain to abusive laws on it in the U.S. Dickens sees the right to conscience abused when it extends beyond protection of an individual's religious rights to compel others to comply involuntarily with religious doctrines that they do not believe in.

Duvall, Melissa. Pharmacy Conscience Clause Statutes: Constitutional Religious "Accommodations" or Unconstitutional "Substantial Burdens" on Women? *American University Law Review* 55(5): 1485-1522, June 2006.

Duvall begins with a background section on the evolution of conscience clause legislation and the judicial response, which began in the mid-1970s following the United States Supreme Court abortion decision in *Roe v. Wade*. Pharmacists are the latest group seeking conscience clause protection. She surmises how the Supreme Court could decide in applying government accommodation to religious beliefs under the First Amendment on conscience clause statutes.

Eide, Karissa. Can a Pharmacist Refuse to Fill Birth Control Prescriptions on Moral or Religious Grounds? *California Western Law Review* 42(1): 121-48, Fall 2005.

Eide surveys in detail current and proposed conscience clause legislation among the states. She also examines the position of the American Pharmacists Association, which adopted in 1998 its official policy recognizing "the individual pharmacist's right to exercise conscientious refusal" and supporting "the establishment of systems to ensure patient access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal" (p. 144).

Grady, Allison. Legal Protection for Conscientious Objection by Health Professionals. *Virtual Mentor: Ethics Journal of the American Medical Association* 8(5): 327-31, May 2006. [Online.] Available at [http://www.ama-assn.org/ama1/pub/upload/mm/384/healthlaw\\_16187.pdf](http://www.ama-assn.org/ama1/pub/upload/mm/384/healthlaw_16187.pdf). Accessed 6 November 2006.

Using Michigan's proposed refusal clause legislation as an example, Grady reviews the range of opinions on health care provider conscientious objection from individual practitioners and professional associations.

Kreischer, Madeline, comp. Pharmacist Conscience Clauses: Laws and Legislation, updated October 2006. National Conference of State Legislatures. [Online.] Available at <http://www.ncsl.org/programs/health/conscienceclauses.htm>. Accessed 6 November 2006.

This website has two entries on legislation, the one referenced above for 2006 and another below it updated for 2006 and for all of 2005, entitled Pharmacist Refusal Clause. Currently only four states—Arkansas, Georgia, Mississippi, and South Dakota—have laws allowing pharmacists to refuse to dispense emergency contraceptive drugs; Illinois is the lone state requiring them to dispense such; and four others—Colorado, Florida, Maine, and Tennessee—have broader conscience clause laws. California has a hybrid, where a pharmacist can only refuse to dispense a prescription if the employer approves the refusal and if the woman can get her prescription in a timely manner. The website links to the laws as well as to pending bills in other states and their status.

Lowell, Staci D. Striking a Balance: Finding a Place for Religious Conscience Clauses in Contraceptive Equity Legislation. *Cleveland State Law Review* 52: 441-65, 2004-2005.

Lowell looks at the intersection of the Constitution, specifically the First and Fourteenth Amendments, with the Pregnancy Discrimination Act within Title VII of the 1964 Civil Rights Act concerning access to contraception. She asserts that the most equitable solution would be "to tailor statutory conscience clause language to cover only organizations that primarily employ and serve those who are their own adherents," or, in other words, a narrow religious exemption.

Lumpkin, Cristina Arana. Does a Pharmacist Have

the Right to Refuse to Fill a Prescription for Birth Control? *University of Miami Law Review* 60: 105-30, 2005-2006.

Lumpkin writes about pharmacists and conscience clauses within the broader topic of contraception, specifically birth control requiring prescription. Her article frames the debate as one of rights: the right to use contraceptives generally versus the right to refuse to dispense oral contraceptives. She also touches on the disciplinary powers of the state licensing board and the options of the pharmacist's employer.

Miller, Courtney. Reflections on Protecting Conscience for Health Care Providers: A Call for More Inclusive Statutory Protection in Light of Constitutional Considerations. *Southern California Review of Law and Social Justice* 15(2): 327-62, Spring 2006.

Miller briefly summarizes the history of conscience clause legislation and then analyzes the forces behind the conscience clause movement. She looks at justification of "the right of conscience" under the Fourteenth Amendment's due process involving autonomy and privacy and under the First Amendment's right to the establishment and free exercise of religion.

Nikas, Nikolas T. Law and Public Policy to Protect Health-Care Rights of Conscience. *National Catholic Bioethics Quarterly* 4(1): 41-52, Spring 2004.

Catholic medical ethics conflicts with some modern medical practices, particularly those related to the beginning and ending of human life. The Catholic health care provider practices in the midst of this conflict and must have the right to refuse to provide care s/he finds morally objectionable. This discussion outlines the necessity for legislation on a state and federal level to protect the rights of health care providers especially in light of a growing institutional protection for which the right to choose becomes the right to coerce.

Protection of Conscience Project (PCP), British

Columbia, Canada. [Online.] Available at <http://www.consciencelaws.org>. Accessed 26 September 2006.

PCP, a "non-denominational, nonprofit initiative," advocates for protection of conscience legislation for health care professionals and serves as an information resource for professionals and the public via its website. The site includes an extensive literature archive of news stories, commentaries, and journal articles on issues of conscience; position papers and policies from medical organizations; and links to a text collection of international, national, and state proposed legislation to protect conscience. PCP collects information across the range of issues that have the potential for conflicts of conscience including abortion, birth control, assisted suicide, human and embryonic experimentation, and interspecies breeding.

United States. Congress. House. Committee on Small Business. Freedom of Conscience for Small Pharmacies, 25 July 2005. [Online.] Available at <http://www.house.gov/smbiz/hearings/databaseDrivenHearingsSystem/hearingPage.asp?hearingIdDateFormat=050725>. Accessed 18 September 2006.

Inspired by Illinois Governor Rod Blagojevich's 1 April 2005 emergency rule requiring all Illinois pharmacies selling contraceptives to fill all prescriptions for FDA-approved contraceptives "without delay," this hearing focused on the effect of "duty-to-fill" laws on small pharmacies. Online testimony is available from: Luke Van der Bleek, a pharmacist, who filed suit against the Governor; Linda Garrelts MacLean, on behalf of the American Pharmacist Association (APhA), a former pharmacy owner instrumental in developing Washington State's emergency contraceptive plan; J. Michael Patton, executive director of the Illinois Pharmacists Association; Sheila Nix, senior policy advisor to Governor Blagojevich; and Megan Kelly, a patient, who was referred away from her primary pharmacy to obtain contraceptive medications.

United States District Court, Western District of Washington. *Erickson v. Bartell Drug Co.* Date of Decision, 12 June 2001. *Federal Supplement, 2d Series* 141: 1266-77, 2001.

*Erickson v. Bartell* is the first case in the federal courts on the issue of sexual discrimination due to an employer's prescription drug plan excluding prescribed contraceptives, which are available only to women. This unequal treatment is unlawful under the 1964 Civil Rights Act. By not offering coverage for contraceptives like birth control pills and devices, the employer created "a gaping hole in the coverage offered to female employees, leaving a fundamental and immediate healthcare need uncovered" (p. 1277).

United States District Court, Western District of Wisconsin. *Noesen v. Medical Staffing Network*. Memorandum and Order, 1 June 2006. Case No. 06-C-071-S. Available at [http://www.wiwd.uscourts.gov/bcgi-bin/opinions/district\\_opinions/C/06/06-C-071-S-06-01-06.PDF](http://www.wiwd.uscourts.gov/bcgi-bin/opinions/district_opinions/C/06/06-C-071-S-06-01-06.PDF). Accessed 7 November 2006.

This case comes after the disciplinary hearing below [Wisconsin Pharmacy Examining Board]. Noesen claimed that Wal-Mart violated his civil rights because he was terminated for his refusal to distribute contraceptives. The court found that Wal-Mart had reasonably accommodated Noesen by having another pharmacist available to fill birth control prescriptions and to answer customer questions. Instead of notifying the other pharmacist about a customer for birth control, Noesen either ignored such a customer by walking away or leaving them on hold. The court dismissed the claim against the State of Wisconsin and granted summary judgment in favor of Medical Staffing Network and Wal-Mart.

White, Matthew. Conscience Clauses for Pharmacists: The Struggle to Balance Conscience Rights with the Rights of Patients and Institutions. *Wisconsin Law Review* 2005(6): 1611-48, 2005.

White begins with a brief history of conscience clauses and then surveys the current legislation. He looks at conscience from two viewpoints,

that of the individual and that of the institution, along with the patient's privacy rights and the employer's right to conduct business as the employer sees fit. After analyzing conscience clauses, both narrow and broad, White proposes stronger and broader patient protection as necessary to preserve the conscience rights of the pharmacist. Some of his suggestions include pharmacist-provided notice to both the patient and the employer, along with mandatory referral.

Wisconsin Pharmacy Examining Board. *In the Matter of the Disciplinary Proceedings Against Noesen*. Final Decision and Order, 13 April 2005. Case No. LS0310091PHM. Available at <http://drl.wi.gov/dept/decisions/docs/0405070.htm>. Accessed 7 November 2006.

The Pharmacy Board's decision begins with an extensive factual background. Essentially, Neil Noesen, a pharmacist who objects to birth control and abortion in accordance with his Catholic faith, refused to refill the birth control prescription of customer AR. Furthermore, he refused to transfer her prescription so that another pharmacy could refill it. The board found Noesen's refusal to transfer and his refusal to inform AR of her options for obtaining a refill to constitute a danger to her health, safety, and welfare. Noesen was reprimanded, and his license limited, meaning he is required to provide written notice of his conscientious objections to a pharmacy five days prior to his employment.

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