

Federal Conscience Clause

Background

Since the 1973 Supreme Court decision in *Roe v. Wade*, many states have given doctors, nurses, and other health care professionals the ability to excuse him or herself from certain activities with which they have a moral objection. Some pharmacists may possess similar objections to dispensing certain medications. Currently, pharmacists in 11 states have specific protections written into their state licensure laws and regulations or provided by state board of pharmacy interpretation that permit them to “step away”. In the majority of states, the question of whether a pharmacist may opt out of dispensing certain medications is addressed in the workplace by pharmacists and their employers.

In recent years, there has been increased attention from the media, policymakers and activists on this matter, and the question has been raised publicly whether pharmacists should have this ability. In 2005, widely publicized incidents in two Chicago pharmacies led the Governor of Illinois to institute an Emergency Order, later made permanent, that required pharmacies that stock contraception to dispense medications “without delay”. Many other states have considered legislation on the topic, some which would permit pharmacists to step aside, and others that would compel pharmacists to dispense prescriptions despite any personal objections. Congress may act upon this issue in 2009. However, the current focus is on the “federal conscience clause” issue that affects health care practitioners and facilities, institutions, organizations, and state and local governments that are recipients or sub-recipients of funding from certain federal government health care programs.

Regulatory Activity

In 2008

In December 2008, the Bush Administration issued a final rule entitled “Ensuring That Department of Health and Human Services (HHS) Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law” (73 FR 78072). Also referred to as the “provider conscience clause regulation”, the final rule took effect on January 20, 2009, and requires more than 584,000 entities, including an estimated 58,000 pharmacies, to certify to HHS that they do not have “coercive or discriminatory policies or practices” in place that may pressure health care workers into participating in procedures, such as abortion or sterilization, that they consider to be religiously or morally objectionable. In issuing the final rule, HHS stated it was responding to concerns that an

environment of “intolerance of individual objections to abortion or other individual religious or moral beliefs” has developed in some sectors of the health care field.

The 2008 final rule implements several provisions of federal law enacted at various times since the 1970s. Collectively referred to in the final rule as the “federal health care conscience protection statutes,” these include the Church Amendments (42 U.S.C. 300a-7), §245 of the Public Health Service Act (42 U.S.C. 238n), and the Weldon Amendment [Consolidated Appropriations Act, 2008, Pub. Law 110-161, Div. G, §508(d), 121 Stat. 1844, 2209 (December 26, 2007)]. The final rule, which establishes new 45 CFR Part 88, combines the slightly varying elements of each of these federal health care conscience protection statutes, resulting in a complex and broad-reaching Departmental policy. Recipients and sub-recipients of federal health care funding subject to the rule would have been required to review their policies immediately and have until October 1, 2009 (or until the date of their next funding renewal), to submit written certification of compliance, or risk loss of HHS funding.

In 2009

On March 10, 2009, HHS published a proposal in the Federal Register (74 FR 10207) that would rescind the December 19, 2008 final rule.

The proposed rule indicates that the federal statutes (cited above) do not require the issuance of implementing regulations, but HHS now wishes to review the final rule “to ensure its consistency with current Administration policy and to reevaluate the necessity for regulations” in this area. The new proposal invites further comments “to aid in the HHS’ consideration of the many complex questions surrounding the issue” and based on its review, HHS will consider rescinding the final rule in its entirety. In particular, HHS seeks information on the following:

- Specific examples or information addressing the scope or nature of problems that would be addressed by the December 19, 2008 final rule (why is the rule needed/not needed?);
- Specific examples or information supporting or refuting claims that the final rule would reduce access to services, particularly to low-income women (what harm, if any, will the rule cause?);
- Comments on whether the final rule was clear enough to minimize the potential for harm resulting from ambiguity; and
- Comments on whether the objectives of the final rule could be accomplished through other, non-regulatory means.

Comments are due to HHS by April 9, 2009.

On January 15, 2009, Attorneys General from seven states joined together in a lawsuit to block the rule because it violates the Constitution and conflicts with several other federal and state laws. The Planned Parenthood Federation of America and the American Civil Liberties Union have also filed separate suits seeking to have the rule overturned. The court has issued no ruling on these suits.

The final rule that HHS is considering rescinding added certain details and procedures to prove compliance, but did not change the basic conscience protections that were already included in the federal statutes. If the final rule is rescinded, things would revert to what they were before the rulemaking began in August 2008 - the conscience protections contained in the federal statutes for individuals and institutions that receive federal money would remain in place. A pharmacist (or other provider or institution covered by the statutes) who is a recipient of HHS funds would have the right to refuse to be involved in any health care activity they found religiously or morally objectionable, and, as was so before the rulemaking process began, this right would be protected under federal law.

APhA Position

APhA recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patient's access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal. When this policy is implemented correctly, and proactively, it is seamless to the patient, and the patient is not aware that the pharmacist is stepping away from the situation. In sum, APhA supports the ability of the pharmacist to step away, not in the way, and supports the establishment of an alternative system for delivery of patient care.

APhA policy does not support lecturing a patient or taking any action to obstruct patient access to clinically appropriate, legally prescribed therapy. APhA policy does not interject the pharmacist between the patient and the physician.

Resources

- APhA Summary of 2008 Final Rule, APhA Comments on Final Rule, and Summary of 2009 Proposed Rule:
<http://www.pharmacist.com/AM/Template.cfm?Section=Issues&CONTENTID=18757&TEMPLATE=/CM/ContentDisplay.cfm>
- National Women's Law Center
<http://www.nwlc.org/pdf/PharmacyRefusalPoliciesMarch2009.pdf>

APhA Government Affairs Resources
www.pharmacist.com/GA

CODE OF ETHICS FOR PHARMACISTS

PREAMBLE

Pharmacists are health professionals who assist individuals in making the best use of medications. This Code, prepared and supported by pharmacists, is intended to state publicly the principles that form the fundamental basis of the roles and responsibilities of pharmacists. These principles, based on moral obligations and virtues, are established to guide pharmacists in relationships with patients, health professionals, and society.

I.A pharmacist respects the covenantal relationship between the patient and pharmacist.

Considering the patient-pharmacist relationship as a covenant means that a pharmacist has moral obligations in response to the gift of trust received from society. In return for this gift, a pharmacist promises to help individuals achieve optimum benefit from their medications, to be committed to their welfare, and to maintain their trust.

II.A pharmacist promotes the good of every patient in a caring, compassionate, and confidential manner.

A pharmacist places concern for the well-being of the patient at the center of professional practice. In doing so, a pharmacist considers needs stated by the patient as well as those defined by health science. A pharmacist is dedicated to protecting the dignity of the patient. With a caring attitude and a compassionate spirit, a pharmacist focuses on serving the patient in a private and confidential manner.

III.A pharmacist respects the autonomy and dignity of each patient.

A pharmacist promotes the right of self-determination and recognizes individual self-worth by encouraging patients to participate in decisions about their health. A pharmacist communicates with patients in terms that are understandable. In all cases, a pharmacist respects personal and cultural differences among patients.

IV.A pharmacist acts with honesty and integrity in professional relationships.

A pharmacist has a duty to tell the truth and to act with conviction of conscience. A pharmacist avoids discriminatory practices, behavior or work conditions that impair professional judgment, and actions that compromise dedication to the best interests of patients.

V.A pharmacist maintains professional competence.

A pharmacist has a duty to maintain knowledge and abilities as new medications, devices, and technologies become available and as health information advances.

VI.A pharmacist respects the values and abilities of colleagues and other health professionals.

When appropriate, a pharmacist asks for the consultation of colleagues or other health professionals or refers the patient. A pharmacist acknowledges that colleagues and other health professionals may differ in the beliefs and values they apply to the care of the patient.

VII.A pharmacist serves individual, community, and societal needs.

The primary obligation of a pharmacist is to individual patients. However, the obligations of a pharmacist may at times extend beyond the individual to the community and society. In these situations, the pharmacist recognizes the responsibilities that accompany these obligations and acts accordingly.

VIII.A pharmacist seeks justice in the distribution of health resources.

When health resources are allocated, a pharmacist is fair and equitable, balancing the needs of patients and society.

Adopted by the American Pharmacists Association membership, October 27, 1994.