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## The costs of conscience clauses

By GEORGE J. BRYJAK

Next in line to purchase the latest *Harry Potter* tale, you are informed by the cashier that the stories of J.K. Rowling are replete with black magic, wizards and warlocks, a masterpiece of Satanic deception designed to lure children into the occult. As selling these books runs contrary to her moral convictions, you leave the store empty-handed.

If you believe this scenario is wildly unrealistic, think again. "Refusal" clauses currently apply to both medical and nonmedical personnel and institutions, including physicians, nurses, hospitals, clinics, universities and insurance companies. Declining service is allowed on the basis of personal conscience, moral conflict and moral values.

To date, the greatest number of refusals occurs among the ranks of pharmacists who deny oral contraceptive pills and emergency contraception pills to women. There were 180 reported prescription denials over a six-month period in 2004, and according to the Alan Guttmacher Institute, which tracks reproductive health issues, "There seems to be a more organized campaign to allow pharmacists to refuse." Four states -- South Dakota, Arkansas, Mississippi and Georgia -- currently permit pharmacists to refuse filling prescriptions, and eight more are considering legislation that would allow pharmacists to refuse dispensing contraceptives, abortifacients or other drugs on the basis of personal and/or religious objections.

Denial of emergency contraception is especially troubling. Of the estimated 600,000 rapes in this country annually, 25,000 result in an unwanted pregnancy. Writing in the *American Journal of Preventive Medicine*, Felicia Stewart of Mount Zion Clinical Research Center and James Trussell of Princeton University argue that almost 90 percent of these pregnancies could be prevented via the administration of emergency contraception pills, which are most effective when taken 12 to 24 hours after sexual intercourse.

Refusal to dispense contraceptives typically follows one of three scenarios. Some pharmacists express their religious objections and recommend the prescription be filled by a colleague. A second group denies contraceptive use as a matter of conscience and refuses to offer the name and location of a more accommodating pharmacist. The third group not only declines service but refuses to return the prescription to the patient. In a few instances, women attempting to purchase contraceptives have been publicly scolded. A Colorado pharmacist declined to fill a prescription for emergency contraception pills, informing a traumatized young woman that she was a baby killer and her soul was in jeopardy .

*Boston Globe* columnist Ellen Goodman makes the salient observation that refusing to fill a prescription is an exercise of “conscience without consequence.” Enduring the psychological devastation of rape, a woman denied emergency contraception pills may suffer the additional burden of worrying about an unwanted pregnancy. While the pharmacist may be exercising his or her religious beliefs, a teenage girl’s life can be changed forever as she confronts the dilemma of either giving birth to the child of a violent criminal or having an abortion. In this collision of rights and values, one individual’s moral conquest is another person’s descent into misery.

It’s unlikely that refusing to dispense prescriptions will remain limited to contraceptives. If your child has a diagnosed eating disorder and the individual dispensing drugs does not believe this condition is a legitimate malady, he or she could decline to fill the legal prescription of a licensed physician. A pharmacist of the opinion that sexual intercourse is for the sole purpose of procreation may reject the Viagra prescription of an elderly man.

Social conservatives have been active at both the state and federal level in their campaign to broaden medically related refusal laws. In 2004, Gov. Jim Doyle of Wisconsin vetoed one such attempt. In his veto message, Gov. Doyle noted that under the proposed legislation, “there are no requirements that health care professionals advise patients of their treatment options, provide a referral to the patient or render care if the patient’s health or life is threatened.” The defeated bill was reintroduced this year.

Anita Allen, law professor at the University of Pennsylvania, spoke of the consequences of giving pharmacists the legal right to withhold emergency contraception pills. “If you open the door to this, I don’t see any place to draw a line,” Ms. Allen said. The author of *The New Ethics* is correct. It may only be a matter of time before bills expanding rights of refusal well beyond the medical profession are introduced in state capitols across the country. As University of Wisconsin law and bioethics professor R. Alta Charo noted: “I’m waiting for the bus driver who refuses to make that routine stop because it happens to be near the abortion clinic.”

The clash between the religious convictions of some health professionals and the rights of their patients/customers raise important questions. Should medical professionals have the legal right to decide what medications and services they will dispense and what medications and services they will withhold from patients? Are we moving toward a patchwork healthcare system wherein some physicians and pharmacists will provide all legal drugs and services while others render only medicine and care that is in line with their religious convictions?

The stakes in this latest manifestation of the culture wars are high, especially with a conservative-leaning Supreme Court. A trip to the bookstore may some- day require waiting in two checkout lines, one for purchasing *Harry Potter* and similarly objectionable volumes, the other for everything else.

George J. Bryjak is a professor of sociology at the University of San Diego.

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