



Northwest Women's Law Center

Advancing legal rights for women

January 27, 2009

Representative Ron Stoker, Chair
Judiciary Committee
Montana House of Representatives

Re: Please Reject House Bill 351

Dear Representative Stoker and Members of the Judiciary Committee:

We write to urge you to reject House Bill 351, an act that would allow all healthcare providers and facilities to refuse to inform, refer, or treat patients based on the healthcare provider's personal beliefs, without regard or liability for the resulting harm to patients. As a regional organization dedicated to advancing women's legal rights, the Northwest Women's Law Center believes that all patients have the rights to informed consent about their healthcare needs and to make healthcare decisions for themselves. We also know that patients, especially victims of sexual assault and domestic violence, are put at risk of harm by laws that allow healthcare providers, including doctors, nurses, and pharmacists to refuse to give information, treat a patient, or fill a patient's prescription based on personal beliefs. **House Bill 351 will put Montanans' health at risk by allowing healthcare providers to deny patients necessary information about their healthcare needs and access to critical health services.**

We are not alone in opposing policies that privilege the rights of healthcare providers over the public health and needs of patients. Significantly, the American Medical Association, the American Pharmacists Association, the American Public Health Association, and the American College of Obstetrician and Gynecologists¹, even while

¹ **American Medical Association**, *Policy H-120.947*, reaffirmed 2007, available at <http://www.ama-assn.org/ad-com/polfind/Hlth-Ethics.pdf> ("Our AMA reaffirms our policies supporting responsibility to the patient as paramount in all situations and the principle of access to medical care for all people; and supports legislation that requires individual pharmacists or pharmacy chains to fill legally valid prescriptions or to provide immediate referral to an appropriate alternative dispensing pharmacy without interference.")

American Pharmacists Association, *JAPhA* 38(4): 417. July/August 1998, cited in *Pharmacist Conscience Clause*, Issue Brief, 2008 ("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.")

American College of Obstetricians and Gynecologists, *Committee Opinion No. 385* (November 2007), available at http://www.acog.org/from_home/publications/ethics/co385.pdf ("Although respect for conscience is important, conscientious refusals should be limited if they constitute an imposition of religious or moral beliefs on patients, negatively affects a patient's health, are based on scientific

recognizing a limited right to conscience for healthcare providers, have all taken the position that patients' needs must be met.

HB 351 does nothing to ensure that patient needs are met. Rather, it would put patients at risk by allowing any healthcare provider – including providers working in public health or at a university – to refuse to tell patients about available forms of routine birth control, to refuse to refer patients to a treating provider, and to refuse to provide treatment even when needed or requested by the patient. It would also allow healthcare providers, in contravention of the medical standard of care,² to refuse to tell rape victims about emergency contraception or to provide it to a woman after a rape.

We focus on contraception because birth control is routine healthcare for the vast majority of women of childbearing age in the United States, and emergency contraception is a critical service for sexual assault survivors. But birth control is the tip of the iceberg in this bill. HB 351 would allow healthcare providers to impose their personal beliefs on patients in any healthcare situation – from the need for palliative care, to vaccinations, to the need for prescription drugs for patients living with HIV, to infertility treatment. Worse yet, it would change Montana's negligence law to excuse providers from liability for any harm patients suffer as a result of these refusals.

While purporting to uphold rights, this bill threatens the civil rights of all Montanans to privacy in medical decision-making and reproductive freedom. If this bill is passed, we intend to bring an immediate legal challenge to its enforcement. **We urge you to reject House Bill 351. The Montana Legislature should appropriately balance patients' rights and public health needs with the recognition of conscience, rather than sacrificing patient health to individual healthcare providers' personal beliefs.**

Sincerely,



Sara Ainsworth

Senior Legal & Legislative Counsel

misinformation, or create or reinforce racial or socioeconomic inequalities. Conscientious refusals that conflict with patient well-being should be accommodated only if the primary duty to the patient can be fulfilled. All health care providers must provide potential patients with accurate and unbiased information so that patients can make informed decisions.”)

American Public Health Association, *Policy 200611* (November 2006), available at <http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1335> (“...any public policies or professional standards that allow for individual pharmacists to refuse to dispense contraception must require pharmacies to protect the patients' ability to obtain prescribed contraceptives in a timely manner at their pharmacy...[a]s the nation's oldest and largest public health organization, APHA has the responsibility and expertise to address this critical health access issue from the perspective of public health protection. Thus, APHA takes the position that the patient's health and well-being must come first in health care delivery and in the formulation of health policy.”)

² Smugar, S., et al., *Informed Consent for Emergency Contraception: Variability in Hospital Care of Rape Victims*, AMERICAN JOURNAL OF PUBLIC HEALTH, Vol. 90, No. 9 (September 2000) at 1372; American Medical Association, *Strategies for Treatment and Prevention of Sexual Assault*, at <http://www.ama-assn.org/ama1/pub/upload/mm/286/sexualassault.pdf> (October 1995).