



Northwest Women's Law Center

Advancing legal rights for women

March 9, 2009

House State Affairs Committee
Representative Thomas Loertscher, Chair
Idaho House of Representatives

Via e-mail

Re: Please Reject House Bill 216

Dear Representative Loertscher and Members of the Committee:

Please reject House Bill 216, an act that would allow pharmacists to refuse to fill prescriptions, refuse to dispense medications, refuse to refer to another provider, or even refuse to counsel patients based on the pharmacist'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 right to obtain their needed medications without interference. **House Bill 216 will put Idaho's public health at risk by allowing healthcare providers to deny patients 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

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

HB 216 does nothing to ensure that patient needs are met. Rather, it would put patients at risk by allowing a pharmacist to refuse to fill any prescription, no matter how critical or time-sensitive. It also allows objecting pharmacists to refuse to refer patients, and to refuse to provide patient counseling for appropriate use of medications – a critical function of pharmacy care. Worse yet, it excuses such pharmacists, and possibly pharmacies as well, from liability for any patient harm resulting from refusals.²

Pharmacists who refuse to fill prescriptions for emergency contraception for victims of sexual assault, who refuse to distribute insulin needles to diabetic patients, or who refuse to fill prescriptions for HIV/AIDS medications, put patients' health at risk. These refusals fall heavily on women, whose access to reproductive healthcare is compromised by a small minority in the pharmacy community who are opposed to birth control. Given the potentially grave consequences of a refusal to fill a medically appropriate prescription, timely access to medications must be ensured.

Indeed, most people do not believe pharmacists should refuse to dispense medication. A November 2004 CBS / *New York Times* poll showed that 78% of Americans believe that pharmacists should not be allowed to refuse to fill prescriptions based on their personal beliefs, including 85% of Democrat respondents and 70% of Republican respondents. This reflects the understanding that pharmacists who refuse to fill prescriptions for personal reasons exercise their conscience *at the expense of another person*.

For these reasons, we urge you to reject House Bill 216. The Idaho Legislature should appropriately balance patients' rights and public health needs with the

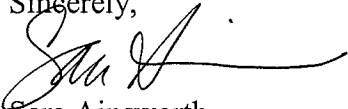
religious or moral beliefs on patients, negatively affects a patient's health, are based on scientific misinformation, or create or reinforce racial or socioeconomic inequalities. Conscientious refusals that conflict with patient well-being should be accommodated only if the primary duty to the patient 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 Idaho law currently permits injured patients to bring negligence actions against pharmacies and pharmacists for injuries resulting from negligent pharmacy care. For example, in *Hayward v. Jack's Pharmacy Inc.*, 115 P.3d 713, 715 (Idaho 2005) the plaintiff filed a negligence claim against, among others, a pharmacy and its employee pharmacists for failing to monitor the decedent's prescription drug usage. See also *Bloching v. Albertson's, Inc.*, 129 Idaho 844 (1997) (plaintiff's negligence claim against pharmacy dismissed for lack of causal link between injury and actions of pharmacist). It is not clear whether House Bill 216 would excuse pharmacies, as opposed to pharmacists, from liability for patient injuries resulting from refusals based on personal beliefs.

recognition of conscience, rather than sacrificing patient health to individual healthcare providers' personal beliefs.

Sincerely,



Sara Ainsworth
Senior Legal & Legislative Counsel

c:

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