



Rights of Conscience

Overview

Arizona law currently provides hospitals, clinics, and health care workers the right to refuse to participate in abortions if they object to the procedure on moral or religious grounds. This right of conscience, found in A.R.S. §36-2151 says:

No hospital is required to admit any patient for the purpose of performing an abortion. A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic, or other medical or surgical facility in which an abortion has been authorized, who shall state in writing an objection to such abortion on moral or religious grounds shall not be required to participate in the medical or surgical procedures which will result in the abortion.

This conscience clause is based on the legitimate right to pursue one's chosen profession without having to violate one's religious tenets or moral beliefs. Many health care workers, including pharmacists, have objections to other procedures on moral grounds, including morning-after pills, sterilization, terminal sedation, and the withholding of food and fluids. Morning-after pills, for example, may not be considered technically to fall within the current conscience statutory provisions. Many health care workers have reason to believe that morning-after pills can cause an abortion by blocking the implantation of a fertilized embryo, yet an employer may not consider morning-after pills to fall within the definition of abortion as referenced in the statute. Legitimate beliefs such as these should not be cause for a healthcare worker's dismissal or subject him to disciplinary action, and a health care institution with religious or moral standards should not be forced by the state to act counter to its corporate beliefs.

In 2002, the Arizona Legislature passed a law mandating that employers who provide insurance coverage [A.R.S. §20-826(Y)] or HMO services [A.R.S. §20-1057.08(A)] for prescription drugs also include prescription contraceptives in the coverage. The exception for religious organizations is very narrow and only includes churches, forcing religious-based organizations such as Catholic Charities to provide contraceptives, contrary to their beliefs. The Center for Arizona Policy supported legislation in 2003 that would have broadened the exception to include groups like Catholic Charities. Gov. Napolitano vetoed the legislation, SB 1089. In 2005, Gov. Napolitano also vetoed legislation granting pharmacists the right to refuse to dispense morning-after pills based on their religious or moral beliefs.¹

Prepared by The Center for Arizona Policy, a non-profit, non-partisan research and education organization.
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Background

Matters of conscience are not just theoretical. They affect real individuals and religious organizations and have the potential of forcing them to violate their conscience or stop doing the job they have chosen to do.

- In the summer of 1999, five California nurses quit their jobs in a county health clinic when they were asked to sign a pledge to dispense the morning after pill to clients. A sixth nurse, Michelle Diaz, did not want personally to dispense the morning-after pill, and she expected to be reassigned. Diaz spoke to the press about her position and was fired shortly thereafter. In May of 2002, a U.S. district court jury found that the county was liable for violating Diaz's right to free speech and her right to freedom of religion. The jury said that the county also failed to reasonably accommodate Diaz's religious beliefs.²
- Karen Bauer was fired from her Kmart pharmacist position in Ohio in 1996 after she refused to fill a prescription for birth control pills, based on her religious beliefs.³
- In 2004, three Denton, Texas, pharmacy employees were fired from their jobs at an Eckerd pharmacy. All three had moral objections to the abortifacient action of morning-after pills and refused to fill a prescription for the drug.⁴
- A pharmacist for Target in Michigan was fired after he refused to sell morning-after pills to customers. He claims that Target agreed to allow him to refer these customers to other pharmacies. He filed a federal lawsuit against Target in November 2007. The case is still pending.⁵
- In 2004, the Supreme Court of California issued a ruling against Catholic Charities of California requiring it to provide its employees insurance coverage which would pay for birth control pills, a practice which Catholics consider to be a mortal sin.⁶

Arizona

The Arizona Constitution, Art. 20, §1, requires that “[p]erfect toleration of religious sentiment shall be secured to every inhabitant of this state.” Religious tolerance and the right of conscience belong not only to churches, but also to individual inhabitants who live in this state. It is individuals who make up the membership of all religious organizations, whether or not they take the form of churches, and it is individuals who are deprived of their right to free exercise of religion when they are compelled to act contrary to their religious beliefs.

The legislature has made exceptions even to criminal law based on religious practice. A.R.S. §13-3402(B) provides for an exemption to felony possession or transfer of peyote when it is intended for use in connection with bona fide religious belief. The legislature, in A.R.S. §36-2151, has also recognized that healthcare organizations and workers have a well-established right not to be forced to participate in abortions if they have moral or religious objections to the procedure.

In 2006, legislation (S.B. 1518) was introduced in the Arizona legislature which would have forced pharmacists to fill all prescriptions despite any moral objections they have against dispensing certain drugs if it caused any undue hardship on customers or the pharmacy, giving no real protection for the individual pharmacist's right of conscience. The bill failed to pass the Senate.

Other States

Conscience clauses vary from state to state.⁷ Four states, Arkansas, Georgia, Mississippi, and South Dakota, have a “conscience clause” specifically for pharmacists protecting them from being forced to dispense pharmaceuticals that cause abortions or other actions against their religious or moral precepts.⁸ Colorado, Florida, Maine, and Tennessee have broad refusal clauses that do not specifically mention pharmacists. California pharmacists have a duty to dispense prescriptions and can only refuse to dispense a prescription, including contraceptives, when their employer approves the refusal and the woman can still access her prescription in a timely manner.

Illinois passed an emergency rule in 2005 that requires a pharmacist to dispense FDA approved contraception. Seven pharmacists have filed suit in federal district court to challenge the regulation.⁹ A pharmacy owner and two pharmacists in Washington state have also filed a federal lawsuit over a new state regulation requiring pharmacies to dispense morning-after pills which forces them to choose between "their livelihoods and their deeply held religious and moral beliefs."¹⁰

Medical workers with moral convictions are granted the most protection in Mississippi. The law states that “[a] health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience.”¹¹ Medical workers in Mississippi, including pharmacists, counselors, and social workers, can refuse to provide any medical service, including counseling and referral, that conflicts with their moral conviction.

¹ "Ariz. Governor Vetoes Pharmacist Refusal Bill," <http://www.foxnews.com/story/0,2933,153416,00.html>

² Elizabeth Bossem, “Contraception or Deception?” Concerned Women for America, www.cwfa.org/articledisplay.asp?id=1559&department=CWA&categoryid=life

³ NARAL, "Guarantee Women's Access to Prescriptions" fact sheet, <http://www.prochoiceamerica.org/assets/files/Birth-Control-Pharmacy-Access.pdf>

⁴ Ibid.

⁵ Egan, P. (2007, December 1). Fired druggist sues over 'morning-after' pill. *Detroit News*. Retrieved January 19, 2008, from <http://www.detnews.com/apps/pbcs.dll/article?AID=/20071201/METRO/712010366/1409/metro>

⁶ California Catholic Conference, "California Supreme Court Rules Against Catholic Charities," <http://www.cacatholic.org/courtdecision.html>

⁷ National Conference of State Legislatures, "Pharmacist Conscience Clauses: Laws and Legislation," <http://www.ncsl.org/programs/health/conscienceclauses.htm>

⁸ *National Conference of State Legislatures*. (2007, November). Retrieved January 19, 2008, from <http://www.ncsl.org/programs/health/conscienceclauses.htm>

⁹ Baldas, T. (2006, January 17). *Law.com*. Retrieved January 19, 2008, from <http://www.law.com/jsp/article.jsp?id=1137146711572>

¹⁰ Pharmacists sue over morning-after pill. (2007, July 30). *MSNBC*. Retrieved January 19, 2008, from <http://www.msnbc.msn.com/id/19998286/>

¹¹ Mississippi Code § 41-41-215, "Health-care provider or institution responsibilities," <http://198.187.128.12/mississippi/lpext.dll/Infobase/13d26/154a9/155f2/1564f?>