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Council for Healthcare Regulatory Excellence

The General Pharmaceutical Council
Setting Standards
Proposals for consultation

**A response by the
National Secular Society**

Deadline 12 January 2010

Reference <http://www.chre.org.uk/consultation/175/>

Response sent to: info@chre.org.uk

The National Secular Society is responding to Questions 3 and 8 in relation to pharmacists claiming the right to refuse to dispense emergency contraception (EHC) because it is against their conscience. These will be dealt with together as the concerns are overlapping. This is a particular concern because, as an article in the Journal of Medical Ethics¹ reports, there is 'a stampede of pharmacists claiming such a right'.

Question 3 - The GPhC is committed to embedding Equality and Diversity at the heart of everything it does. Do you think that the draft standards support this commitment?

Question 8 - Do you agree that there should be provision within the Code which allows personal beliefs of registrants to prevent them from providing a particular professional service? (subject to ensuring that patients and the public are referred to alternative providers of the service they require)?

If conscience is allowed to take precedence over customers' needs, then there is no equality, there is a hierarchy of rights with the pharmacists' taking precedence. Diversity would not be supported either if the pharmacists' personal needs prevailed. Customers' Human Rights should be respected and allowing a conscience clause compromises this.

Allowing pharmacists a choice potentially denies customers *any* choice in a way that may affect them – and their partners and families - long-term if they are then forced to seek an abortion or raise an unplanned-for child. If a privilege or advantage accorded to one group disadvantages another, then it should not be an assumed right.

Selling EHC is part of the job pharmacists have voluntarily chosen, been trained and employed to do, generally at public expense. It is therefore reasonable to require them to fulfil their duty to the public as a whole. Pharmacists whose conscience creates conflict in this area should either set aside their personal beliefs for the benefit of the customer or work in an area of practice where such conflicts do not arise.

A conscience provision would, we contend, conflict with the following section from The General Pharmaceutical Council – Regulatory Standards Development Programme:

Conduct, ethics and performance

Standards of conduct, ethics and performance

As a pharmacist or pharmacy technician you must:

1. Make patients and the public your first concern
2. *You must:*
 - ensure the interests of patients and the public are not compromised by personal or organisational interests, incentives, targets or similar measures

2. Respect the dignity, rights and beliefs of patients, the public and others.
You must:

¹ <http://jme.bmj.com/content/33/5/249.full.html#ref-list-1>

- *treat patients, the public and others politely and considerately, respecting their cultural differences, values and beliefs*
 - *ensure your views about a person's lifestyle, beliefs, race, gender, age, sexuality, disability, or other perceived status do not prejudice the services they receive*
5. *Listen to patients and the public and respect their choices.* (our underlining)

These points all clearly put the customers' health and well-being above the interests of the pharmacist, who may not discriminate against anyone on the grounds of personal belief.

Moreover, current legislation does not allow pharmacists on the pharmaceutical list a right to deny customers drugs on conscience grounds. National Health Service (Pharmaceutical Services) regulations 2005 Schedule 1, Part 2, Paragraph 9 outlines the terms that apply to pharmacists on an NHS pharmaceutical list. The circumstances in which they may refuse to supply a drug do not include issues of conscience. Paragraph 4 states that:

Dispensing services

4. *A pharmacist shall, to the extent that paragraphs 5 to 9 require and in the manner described in those paragraphs, provide proper and sufficient drugs and appliances to persons presenting prescriptions for drugs or appliances by health care professionals in pursuance of their functions in the health service, the Scottish health service or the Northern Ireland health service* (our underlining).

As there is no statutory basis for a conscience opt-out, there is the potential for a pharmacist or pharmacy to be sued if actions resulted in the customer suffering. In the light of this, it should be mandatory for pharmacists or their employers to take out liability insurance to cover this eventuality.

Any pharmacist who decides not to stock certain medical products on conscience grounds is potentially not fulfilling requirement 4 and paragraph 9 mentioned above. **We believe their names should be removed from the NHS list for failure to comply.**

Many customers who need EHC are in a vulnerable position. It is difficult to envisage the circumstances in which pharmacists could communicate conscientious objections to patients without also communicating personal judgement. Any mention of the pharmacists' beliefs could put pressure on the customer and cause distress.

Teenage pregnancy rates in the UK are among the highest in Europe. Any behaviour likely to worsen this situation, as we believe would result from permitting pharmacists to impose their conscience, should be very closely scrutinised before being permitted.

There is strong evidence that customers are not being properly served or referred, both with over the counter purchases and when they have a prescription; there are also reports of pharmacists showing insufficient respect, offering no privacy, being clearly judgemental and giving no clear referral.² **The retention of an unfilled prescription should be a disciplinary offence.**

² http://news.bbc.co.uk/1/hi/england/south_yorkshire/6049750.stm
<http://www.timesonline.co.uk/tol/news/uk/health/article2603966.ece>
http://www.metronews.co.uk/news/s/1050915_pair_denied_morning_after_pill
<http://news.bbc.co.uk/1/hi/wales/4649425.stm>
http://www.manchestereveningnews.co.uk/news/health/s/174/174873_woman_denied_pill_on_moral_grounds.html

A further concern is that allowing a conscience opt-out in one area may lead to a growing number of refusals on broader grounds. In America, for example, some pharmacists are now refusing to sell *any* form of contraception, and may refuse EHC even when a woman has been raped.³

We can provide details of an NSS member who, while on holiday in the US, had to go to 10 pharmacists before he could find one who would sell EHC for his wife after a condom failed.

As the conscience opt out expands its reach in the US, ambulance drivers have refused to transport patients for abortions and a fertility clinic has refused to assist a gay woman. If conscience clauses are allowed, it could for example be expected that some dispensers will refuse to provide products tested on animals if this is against their beliefs.

An academic paper from the New England Journal of Medicine⁴ identifies the problems that can arise once opt-outs are allowed. It says that 'conscience is a poor touchstone; it can result in a rule that knows no bounds (...) there comes a point at which tolerance breaches the standard of care'. It also states that 'Conscience is a burden that belongs to the individual professional; patients should not have to shoulder it'.

There is much academic evidence that allowing conscience opt-outs to pharmacists endangers the health and well-being of women, particularly in the lower income groups.⁵ Younger women in particular are much less likely to have the ability, self-confidence or resources to embark on a tour of pharmacies.

An expanding list of products that pharmacists may object to providing leads to 'the randomness of individual morality'⁶. Customers 'need assurance that the standard of care is unwavering'. They are very unlikely to check out in advance whether local pharmacists will provide certain services on the off-chance of needing them in the future; it is most likely that they will not find out until they urgently need a service, only to find it denied them.

Referrals

The Guidelines state that a pharmacist must:

inform relevant persons or authorities if your personal beliefs prevent you from providing a particular professional service and ensure patients and the public are referred to alternative providers of the service they require.

While referrals may appear a workable solution, in practice it may not always be possible for the customer to find an alternative. For example, in rural areas or late at night it may be either impossible to find another pharmacist or possible only if the

http://www.examiner.co.uk/news/local-west-yorkshire-news/tm_headline=chemist-refused-woman-pill-on-religious-grounds&method=full&objectid=19862496&siteid=50060-name_page.html

³ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC557172/>

⁴ <http://content.nejm.org/cgi/content/extract/360/15/1484>

⁵ A small sample from this wide range of academic literature includes:

<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/aulr55&div=38&id=&page=http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/berkwolj20&div=18&id=&page=>

=

<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/hmax16&div=14&id=&page=>

⁶ Op cit

customer travels a long distance at personal expense. For women, there may also be safety issues involved in such travel. Any long journey may have to be explained to parents or family members, which could put the women in a very difficult position.

If a pharmacist does refer a customer to another dispenser, there are no guarantees that this one will dispense the EHC either.

In addition, although the window for taking EHC is 72 hours, the longer the woman is forced to wait, the greater the potential risk of pregnancy and health complications.

If a pharmacist does not comply with the obligation to refer, there is currently no way of monitoring this unless a formal complaint is made. This may be a particular issue in small or close religious communities. Women and their partners may lack the confidence, information or freedom necessary to make a complaint.

The NSS therefore recommends that pharmacists are not permitted a conscience opt-out relating to EHC or to any other treatment in the interests of equality, diversity and health or well-being. The standards should be rewritten in light of our recommendations and evidence above.

If, against our recommendation, pharmacists are allowed a conscience clause then:

- 1. Pharmacies must ensure that there is a qualified pharmacist on duty at all times who will provide all legal products without exercising their conscience.**
- 2. Those pharmacists wishing to exercise their conscience should be required to indicate the areas/circumstances in which they reserve the right to do so. Local GPs, the PCO and the GPhC should be formally notified**
- 3. There should be clear signs both inside and outside the pharmacy stating that dispensers may/will not provide certain products**
- 4. It should be mandatory for each refusal to be formally documented with copies given to the customer, the PCO and the GPhC. Refusals should be followed up to ensure that an adequate service is maintained in all areas. Failure to provide a completed form to all mandatory recipients should be a disciplinary offence.**
- 5. Pharmacists must be able to guarantee that any other dispenser they refer a customer to will definitely dispense the product. If there is no guaranteed alternative, they must then dispense it themselves.**
- 6. Applicants for posts should make their position clear at the time of application and this should be notified to the PCO and GPhC.**

About the NSS

The National Secular Society campaigns for a society in which everyone is free to practise their faith, change it or not have one, according to their conscience. Our beliefs or lack of them should not put us at an advantage or a disadvantage. Religion should be a matter of private conscience, for the home and place of worship; it must not have privileged input into politics, legislation, education or healthcare. Religious rights and claims of conscience should not take precedence over the human rights of others.