PHARMACIST FREEDOM OF CONSCIENCE ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year

AMERICANS UNITED FOR LIFE
Changing Law to Protect Human Life, State by State
INTRODUCTION

In recent years, pharmacists have faced increasingly strident and public attacks on their rights of conscience.¹ Not surprisingly, this attack directly relates to the ongoing battle over abortion. Following Roe v. Wade,² the issue of healthcare rights of conscience focused on the freedom of physicians, nurses, and other healthcare professionals to abstain from participating in surgical abortions. Although this freedom is generally accepted by society, in the past decade pro-abortion groups have expanded their attacks on conscience, especially with regard to pharmacists’ role in dispensing so-called “emergency contraception,” which includes Plan B (i.e. the “morning-after pill”³) and ella (a progesterone-blocking drug similar to the FDA-approved “abortion pill” RU-486⁴) (drugs that have life-ending mechanisms of action), and oral contraceptives. Where assisted suicide has been legalized there is an added concern that pharmacists will be coerced to participate in intentionally life-ending prescriptions.

The growing trend is to demand access to these drugs at the expense of the freedom of conscience of healthcare professionals.⁵ As a result, heated political battles are taking place in state legislatures across the country as politicians attempt to pass laws either to protect pharmacists’ rights to abstain from participating in morally objectionable practices or to force them to act in violation of their consciences or risk losing their jobs.

Furthermore, most commentators have slipped into the habit of using the language of tolerance and accommodation rather than framing this debate for what it truly is—a struggle to validate and protect individual conscience rights. In the words of the American Pharmacists Association: “We don’t have a profession of robots. We have a profession of humans. We have to acknowledge that pharmacists have individual beliefs.”⁶ Nonetheless, instead of having their individual beliefs acknowledged and respected, pharmacists are increasingly faced with societal

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¹ For an example of a pharmacists’ conscience objection resulting in the loss of employment, see Jo Mannies, “Pill Dispute Here Costs Pharmacist Her Job,” St. Louis Post-Dispatch, January 27, 2006, A1.
² 410 U.S. 113 (1973).
³ Although Plan B is commonly referred to as the “morning after pill,” such a description is misleading because the drug actually functions as an abortion-inducing drug.
⁶ Susan C. Winckler, American Pharmacists Association, Vice President for Policy Communications

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demands to go along with dispensing chemicals and devices that they know will be used to destroy human life.

Proponents of abortion recognize the paramount importance of the issue of conscience generally and pharmacists’ rights of conscience specifically. Planned Parenthood, NARAL Pro-Choice America (NARAL), and their allies are presently engaged in a campaign to enact legislation that would force pharmacists to fill prescriptions for birth control and abortion-inducing drugs regardless of an individual pharmacist’s conscientious objection. NARAL has characterized these conscientious pharmacists as “renegade[s] . . . refusing to fill safe, legal prescriptions for birth control” and insists that “pharmacies have a duty to dispense and have an ethical obligation not to endanger their patients [sic] health by withholding basic healthcare.”7 This distorted rhetoric must be confronted, and an accurate understanding of the national crisis of conscience must be brought to the forefront.

To aid in efforts to protect pharmacists and pharmacies, AUL has developed the “Pharmacist Freedom of Conscience Act,” providing comprehensive protection for pharmacist conscience rights. For more information and drafting assistance, please contact AUL’s Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

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PHARMACIST FREEDOM OF CONSCIENCE ACT

HOUSE/SENATE BILL No. ______
By Representatives/Senators ____________

Section 1. Title.

This Act may be known and cited as the “Pharmacist Freedom of Conscience Act.”

Section 2. Legislative Findings and Purposes.

(a) The [Legislature] of the State of [Insert name of State] finds that:

(1) It is the public policy of [Insert name of State] to respect and protect the fundamental rights of conscience of all individuals, organizations, and entities who prescribe, provide, administer, dispense, pay for, refer for, or participate or assist in providing or administering pharmaceuticals.

(2) Without comprehensive protection, the rights of conscience of pharmaceutical providers, institutions, and payers may be violated in various ways, such as hiring discrimination, harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or refusal to certify.

(3) It is the purpose of this Act to protect as a basic civil right the right of all pharmaceutical providers, institutions, and payers to decline to prescribe, provide, administer, dispense, pay for, counsel on behalf of the administration of or provision of any pharmaceutical product, medication, drug, device, or service; refer for the administration of or provision of any pharmaceutical product, medication, drug, device, or service; or participate or assist in providing or administering any pharmaceutical product, medication, drug, device, or service that violates their consciences. Such pharmaceuticals may include, but are not limited to, abortion-inducing drugs and medications used for artificial contraception, sterilization, artificial insemination, assisted reproduction, “aid in dying,” “mercy killing,” physician-assisted suicide, and euthanasia.
(4) Accordingly, it is the purpose of this Act to prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such pharmaceutical providers, institutions, and payers that decline to provide pharmaceutical products, medications, drugs, devices, or services that violate their consciences.

Section 3. Definitions.

(a) “Pharmaceutical” means any product, medication, drug, or device that must be prescribed by a physician or obtained at a pharmaceutical institution.

(b) “Pharmaceutical provider” means any individual who may be asked to participate in any way in a pharmaceutical service, including, but not limited to, the following: a pharmacist, pharmacy owner, agent, employee, extern, technician, researcher, or any other person responsible to dispense or administer pharmaceuticals. This includes physicians, physician’s assistants, nurses, nurses’ aides, medical assistants, hospital employees, clinic employees, nursing home employees, counselors, social workers, medical and pharmacy school faculty or students, and professionals, paraprofessionals, or any other person who furnishes, or assists in the dispensing or administering of pharmaceuticals.

(c) “Pharmaceutical service” means any phase of patient pharmaceutical care, treatment, or procedure, including, but not limited to, the following: prescribing, providing, dispensing, or administering a pharmaceutical; patient referral, counseling, therapy, testing, or any other care or treatment rendered by pharmaceutical providers or pharmaceutical institutions related to prescribing, providing, administering, or dispensing of any product, medication, drug, or device.

(d) “Pharmaceutical institution” means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing pharmaceutical services, including but not limited to: pharmacies, hospitals, clinics, medical centers, ambulatory surgical centers, private physicians’ offices, nursing homes, university medical or pharmacy schools, nursing schools, medical or pharmaceutical training facilities, or other institutions or locations wherein pharmaceutical services are provided to any person.

(e) “Pharmaceutical payer” or “prescription payer” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, any pharmaceutical product, medication, drug, device, or service.
(f) “Healthcare payer” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, any healthcare service or product, including, but not limited to health maintenance organizations, health plans, insurance companies, or management services organizations.

(g) “Employer” means any individual or entity that pays for or provides pharmaceutical coverage as a benefit to its employees, whether through a third party, a health maintenance organization, a program of self insurance, or some other means.

(h) “Participate” in pharmaceutical services means to prescribe, provide, dispense, administer, counsel on behalf of, refer for, or participate or assist in providing any pharmaceutical product, medication, drug, device, or service.

(i) “Pay” or “payment” means to pay, contract for, or otherwise arrange for the payment of in whole or in part.

(j) “Conscience” means the religious, moral or ethical principles held by a pharmaceutical provider, the pharmaceutical institution, or pharmaceutical payer. For purposes of this Act, a pharmaceutical institution or pharmaceutical payer’s conscience shall be determined by reference to its existing or proposed religious, moral or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other relevant documents.


(a) **Freedom of Conscience.** A pharmaceutical provider has the right not to participate in, and no pharmaceutical provider shall be required to provide or refer for, any pharmaceutical services including but not limited to: prescribing, providing, administering, dispensing, paying for, counseling on behalf of the administration or provision of any pharmaceutical product, medication, drug, device, or service; referring for the administration or provision of any pharmaceutical product, medication, drug, device, or service; or participating or assisting in providing or administering any pharmaceutical product, medication, drug, device, or service that violate his or her conscience.

(b) **Immunity from Liability.** No pharmaceutical provider shall be civilly, criminally, or administratively liable for declining to participate in a pharmaceutical service including, but not limited to: prescribing, providing, administering, dispensing, paying for, counseling on behalf of the administration or provision of any pharmaceutical product, medication, drug, device, or service.
service; referring for the administration or provision of any pharmaceutical product, medication, drug, device, or service; or participating or assisting in providing or administering any pharmaceutical product, medication, drug, device, or service that violates his or her conscience.

(c) **Discrimination.** It shall be unlawful for any person, pharmaceutical provider, pharmaceutical institution, public or private institution, public official, or any board which certifies competency in pharmacy to discriminate against any pharmaceutical provider in any manner based on his or her declining to participate in a pharmaceutical service including but not limited to: prescribing, providing, administering, dispensing, paying for, counseling on behalf of the administration or provision of any pharmaceutical product, medication, drug, device, or service; referring for the administration or provision of any pharmaceutical product, medication, drug, device, or service; or participating or assisting in providing or administering any pharmaceutical product, medication, drug, device, or service that violates his or her conscience. For purpose of this Act, discrimination includes, but is not limited to the following: termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, discrimination in hiring, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide training opportunities, or any other penalty, disciplinary, or retaliatory action.

Section 5. **Freedom of Conscience of Pharmaceutical Institutions.**

(a) **Freedom of Conscience.** A pharmaceutical institution has the right not to participate, and no pharmaceutical institution shall be required to participate in any pharmaceutical service including but not limited to: prescribing, providing, administering, dispensing, paying for, counseling on behalf of the administration or provision of any pharmaceutical product, medication, drug, device, or service; referring for the administration or provision of any pharmaceutical product, medication, drug, device, or service; or participating or assisting in providing or administering any pharmaceutical product, medication, drug, device, or service that violates its conscience.

(b) **Immunity from Liability.** A pharmaceutical institution that declines to provide or participate in a pharmaceutical service that violates its conscience shall not be civilly, criminally, or administratively liable if the institution provides notification posted in a clearly visible location where pharmaceuticals are provided, dispensed, or administered.

(c) **Discrimination.** It shall be unlawful for any person, public or private entity or institution, or public official to discriminate against any pharmaceutical institution, or any
person, association, corporation, or other entity attempting to establish a new pharmaceutical institution or operating an existing pharmaceutical institution, in any manner, including but not limited to the following: any denial, deprivation, or disqualification with respect to licensure; any aid assistance, benefit, or privilege including staff privileges; or any authorization including authorization to create, expand, improve, acquire, or affiliate or merge with any pharmaceutical institution, because such pharmaceutical institution, or person, association, or corporation planning, proposing, or operating a pharmaceutical institution, declines to participate in a pharmaceutical service which violates the pharmaceutical institution’s conscience.

(d) **Denial of Aid or Benefit.** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce, disqualify, or discriminate against any person, association, corporation, or other entity attempting to establish a new pharmaceutical institution or operating an existing pharmaceutical institution because the existing or proposed pharmaceutical institution declines to participate in a pharmaceutical service contrary to the pharmaceutical institution’s conscience.


[**Drafter’s Note:** This provision implicates the Patient Protection and Affordable Care Act, the federal healthcare law enacted in 2010. Please contact AUL for drafting assistance when seeking to protect any category of pharmaceutical payer.]

(a) **Freedom of Conscience.** A healthcare or pharmaceutical or prescription payer has the right to decline to pay, and no healthcare or pharmaceutical or prescription payer shall be required to pay for or arrange for the payment of any pharmaceutical product or service that violates its conscience.

(b) **Immunity from Liability.** No healthcare or pharmaceutical or prescription payer and no person, association, corporation, or other entity that owns, operates, supervises, or manages a healthcare or pharmaceutical or prescription payer shall be civilly or criminally liable by reason of the healthcare or pharmaceutical payer’s declining to pay for or arrange for the payment of any pharmaceutical product or service that violates its conscience.

(c) **Discrimination.** It shall be unlawful for any person, public or private institution, or public official to discriminate against any healthcare or pharmaceutical or prescription payer, or any person, association, corporation, or other entity (i) attempting to establish a new healthcare or pharmaceutical payment plan, or (ii) operating an existing healthcare or pharmaceutical

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payment plan, in any manner, including but not limited to the following: any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege, or authorization, including but not limited to any authorization to create, expand, improve, acquire, or affiliate or merge with any healthcare or pharmaceutical payment plan, because a pharmaceutical or prescription payer, or a person, association, corporation or other entity planning, proposing, or operating a healthcare or pharmaceutical payment plan declines to pay for or arrange for the payment of any pharmaceutical product or service that violates its conscience.

(d) **Denial of Aid or Benefits.** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants or benefits, or in any other manner to coerce, disqualify, or discriminate against any healthcare or pharmaceutical or prescription payer, or any person, association, corporation, or other entity attempting to establish a new healthcare or pharmaceutical payment plan or operating an existing healthcare or pharmaceutical payment plan because the existing or proposed healthcare or pharmaceutical payment plan declines to pay for, or arrange for the payment of any pharmaceutical product or service that is contrary to its conscience.

**Section 7. Civil Remedies.**

(a) **Civil Action.** A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this Act. It shall not be a defense to any claim arising out of the violation of this Act that such violation was necessary to prevent additional burden or expense on any other pharmaceutical provider, pharmaceutical institution, pharmaceutical payer, individual, or patient.

(b) **Damage Remedies.** Any individual, association, corporation, entity, or pharmaceutical institution injured by any public or private individual, association, agency, entity, or corporation by reason of any conduct prohibited by this Act may commence a civil action. Upon finding a violation of this Act, the aggrieved party shall be entitled to recover threefold the actual damages, including pain and suffering, sustained by such individual, association, corporation, entity, or pharmaceutical institution, the costs of the action, and reasonable attorney’s fees; but in no case shall recovery be less than $5,000 for each violation in addition to costs of the action and reasonable attorney’s fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.
(c) **Injunctive Remedies.** The court in such civil action may award injunctive relief, including, but not limited to, ordering reinstatement of a pharmaceutical provider to his or her prior job position.

**Section 8. Severability.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**Section 9. Effective Date.**

This Act takes effect on [Insert date].
Eleven states provide some specific protection for the freedom of conscience of pharmacists and pharmacies: AZ, AR, CA, GA, ID, KS, LA, ME, MS, NC, and SD.
More detailed information about the need and justification for rights of conscience protections for health care providers including pharmacists and pharmacies can be found in AUL’s annual publication *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

*Defending Life 2012* is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

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