

Testimony

Of

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Concerning LB 564

Health Care Freedom of Conscience Act

Submitted to the

Judiciary Committee

Nebraska Unicameral

March 1, 2013

Senators:

Although I had planned on addressing the Committee in person, I had to leave town this morning to attend the American Pharmacists Association Annual Meeting in Los Angeles. The following reflects my position on LB 564, the Health Care Freedom of Conscience Act.

I am speaking for myself. However, as a member of Pharmacists For Life International, I can state with certainty that my comments are representative of pro-life pharmacists wherever they practice.

I have been a pharmacist for 41 years. I have practiced in an independent community pharmacy in suburban Philadelphia as well as a large and a small hospital in Indiana. I am licensed to practice pharmacy in Nebraska. I have spent the past 36 years as a pharmacy educator with the past 24 years at Creighton University where I serve as Professor of Pharmacy Sciences in the School of Pharmacy and Health Professions. My wife and I belong to a number of pro-life organizations. For the past 20 years, I have been the faculty advisor for the Creighton Students for Life.

I would like to bring to your attention some issues related to LB 564, Health Care Freedom of Conscience Act. For at least the past 15 years, pharmacists around the country have been fired for refusing to fill prescriptions for various abortifacient drugs and contraceptives (many of which are actually abortifacients). In 1999, Plan B (Levonorgestrel) was approved for use as an emergency contraceptive. The law requires the following:

“Plan B will only be sold in pharmacies/stores staffed by a licensed pharmacist. In order to purchase Plan B over-the-counter, personal identification showing proof of age (18) is required. Plan B will be available behind the counter at the pharmacy in order to manage both prescription (17 years and under) and OTC (18 years and over) dispensing. This means Plan B will not be sold at gas stations or convenience stores, where other OTC products are routinely available.”

Source:

<http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm109783.htm>

Since the release of Plan B, pharmacists around the country have refused to dispense or sell (depending on the patient’s age) Plan B due to their moral and/or religious beliefs that this is an abortifacient drug. The following is taken from the manufacturer’s own product information:

“Plan B One-Step is believed to act as an emergency contraceptive principally by preventing ovulation or fertilization (by altering tubal transport of sperm and/or ova). *In addition, it may inhibit implantation* (by altering the endometrium).”

Source: HIGHLIGHTS OF PRESCRIBING INFORMATION, Mfg. by Gedeon Richter, Ltd., Budapest, Hungary for Duramed Pharmaceuticals, Inc. Subsidiary of Barr Pharmaceuticals, Inc. Revised: July 2009 11001459

By the manufacturer’s own admission, Plan B is, at times, an abortifacient drug. The firings of pharmacists continue to escalate depending on the state in which they practice. I would like to provide two examples:

Illinois: Pharmacists in a number of chain pharmacies (Walmart, Walgreen’s, CVS, etc) were fired for refusing to dispense, sell, or stock Plan B. The pro-abortion former Governor, Rod Blagojevich, attempted to force pharmacists to violate their beliefs as follows:

“In April 2005, Governor Rod Blagojevich said that the ‘right of conscience does not apply to pharmacists’ and issued an edict (executive order) attempting to force all pharmacists in the state to stock EC’s and distribute the drugs.”

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I was hired by the American Center for Law and Justice (ACLJ) as an expert witness to help defend a pharmacist who was charged with lying to a “patient” by stating that they didn’t stock Plan B so that she did not have to sell it. Ironically, Illinois has one of the best conscience acts in the country.

See: Civil Immunities, 745 ILCS 70/ Health Care Right of Conscience Act;
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2082&ChapterID=58>)

The governor tried to trump state law through the issuance of an executive order which the federal district court ultimately ruled illegal. In the end, the right of conscientious refusal by health care providers (in this case, pharmacists) in Illinois was upheld. Health care providers in Illinois are also protected from punishment directly due to the existence of the law specifically designed to offer such protection.

See: July 31 2007 in Vandersand v. Walmart; Judge Jeanne Scott in Springfield, IL.

Washington State: In April 2007, at the demand of pro-abortion Governor, Christine Gregoire, the Board of Pharmacy adopted a new rule and amended another rule on pharmacies' responsibilities. These required pharmacists to dispense all medications except those for which there exists a medical complication. These regulations require pharmacists to dispense or sell medications even if they violate the pharmacists' right of conscience. Because of my work in Illinois, I was hired as an expert witness/consultant by the attorneys in this case. One of the five amicus briefs in the case was by pharmacists and I was a participant in that brief. (A copy is attached. See Attachment A) After a lengthy court battle up to the Ninth Circuit, it was sent back for trial to the U.S. District Court. On February 2, 2012, Judge Ronald B. Leighton ruled that these regulations were "unconstitutional under the Free Exercise Clause of the First Amendment to the United States Constitution" and "unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution". (A copy of the Judge's Permanent Injunction is attached. See Attachment B.)

American Pharmacists Association (APhA) Policy: I am a long-time member of the APhA House of Delegates and have represented the Nebraska Pharmacists Association and all of Nebraska's pharmacists for the more than 20 years (Ironically, I will be representing Nebraska pharmacists today in the APhA House of Delegates). In 1998, in response to cases of pharmacists being fired for refusing to fill prescriptions for abortifacient drugs, a policy was proposed to the APhA HOD regarding this issue. The adopted policy, Pharmacist Conscience Clause, reads as follows:

- 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.*

1998

I was a member of the House that passed this policy and I voted for its passage. It remains the policy of APhA today.

I have mentioned the items above, in part, because of my intimate involvement in all of them.

There is a growing trend of governmental usurpation of our personal liberties. This includes governmental coercion and a violation of each health care professional's (including pharmacists) right to serve patients within the limits of their religious and/or moral beliefs.

I have included testimony by the American Pharmacists Association in front of the U.S. House of Representatives Small Business Committee (Attachment C). This was precipitated by the actions taken against pharmacists in Illinois as described above. It addresses the impact on pharmacies of any attempts to restrict pharmacists' right of conscientious refusal (to fill a prescription, sell nonprescription drugs, etc.). While the American Pharmacists Association supports a pharmacist's right of conscientious refusal, as stated in the policy above, the pharmacist who testified, Linda Garrelts MacLean (ironically from Washington State), has no objection to dispensing emergency contraceptives as she states in her testimony. One of the objections that is made to such conscience protection is the availability of these drugs in rural areas. Linda Garrelts MacLean addresses the issue of availability of drugs that pharmacists do not want to dispense. For example, in rural areas with very few physicians, pharmacists who wish to dispense these drugs can do so under the authority of collaborative practice agreements which can be done in Nebraska. In areas where there are a limited number of pharmacists, patients can obtain these drugs from local physicians. Even in rural Nebraska, availability is not an issue.

As a Catholic, I would like to share with you what I share with my students about being a Catholic pharmacist with an informed conscience.

- “All people of good will, are called upon under grave obligation of conscience not to cooperate formally in practices which, ***even if permitted by civil legislation***, are contrary to God's law.”
- “Indeed, from the moral standpoint, it is never licit to cooperate formally in evil.”
- “Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it.”
- “This cooperation can never be justified either by invoking respect for the freedom of others ***or by appealing to the fact that civil law permits it or requires it.***”
- “Each individual in fact has moral responsibility for the acts which he personally performs; no one can be exempted from this responsibility, and on the basis of it everyone will be judged by God himself (cf. Rom 2:6; 14:12).”
- ***“To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right.”***
- “Were this not so, the human person would be forced to perform an action intrinsically incompatible with human dignity, and in this way human freedom itself, the authentic meaning and purpose of which are found in its orientation to the true and the good, would be radically compromised.”

Source: Pope John Paul II, “The Gospel of Life,” (March 25, 1995), at

http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html

Although this issue has not yet reached the courts in Nebraska, I personally know pharmacists and student pharmacists who are concerned about their jobs because of their unwillingness to participate in actions that violate their personal moral and/or religious beliefs. The case in Illinois was decided because the state had a broad Health Care Right of Conscience Act that covers all health care professionals who make a decision of conscience.

However, it is not enough to just allow a health care professional to have the right to refuse to participate in any act that violates his/her conscience. It is imperative that the law protect such an individual from the retaliatory actions that continue to occur around the country in direct response to these decisions of conscience. Such retaliation including demotion, firing, and civil suits can be so coercive as to negate the right of conscientious refusal that the law claims to allow.

On the other hand, LB 564 would in no way affect those individuals who voluntarily wish to participate in abortion or be involved in dispensing abortifacient drugs. It would merely allow those of us who can't in good conscience participate to opt out.

Lastly, systems already exist in Nebraska to ensure patient access to these drugs even in the most rural areas.

I would like to close with the following statement made by Pope Benedict XVI, in an address to an International Congress of Catholic pharmacists on October 29, 2007.

“It is not possible to anesthetize the conscience, for example, when it comes to molecules whose aim is to stop an embryo implanting or to cut short someone's life... I invite your federation [of pharmacists] to consider conscientious objection which is a right that must be recognized for your profession so you can avoid collaborating, directly or indirectly, in the supply of products which have clearly immoral aims, for example abortion or euthanasia...”

I hope that we can be proactive in Nebraska and avoid the political and judicial conflicts that continue to occur around the country. I support LB 564 and urge the Judiciary Committee to approve the bill for consideration by the entire Unicameral.

Thanks you for your consideration.



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Attachment A

Pharmacists' Amicus Brief – Washington State

Attachment B

Judge Ronald B. Leighton: Permanent Injunction

Attachment C

American Pharmacists Association Testimony
U.S. House of Representatives Small Business Committee