ACADEMY OF PROFESSIONAL DEVELOPMENT

Critical Thinking Student Artifact

Pharmacist's Dilemma: Contraceptives vs. Conscience

Intro

Religion, conscience, and morality pharmacists face this trifecta when dealing with the sticky topic of contraceptives. They face the Shakespearean question, "to dispense or not to dispense?" The popular emergency contraceptive Plan B was approved for prescription- use only by the FDA (FDA). The FDA required that Plan B would be stocked behind the counter since it is prescription only if under 18 years of age however it was available for purchase without a prescription if individuals are above the age of 18 (FDA). This recently changed in June 2013 when the FDA sought to improve accessibility to Plan B by making it an over-the-counter (OTC) drug (FDA). There is a large misconception on how emergency contraceptives work to prevent pregnancy as opposed to chemical abortion medication that seeks to terminate a pregnancy. Plan B is a time-sensitive medication that is taken within the first 72 hours after intercourse to prevent attachment of the ovum to the uterus (WebMD). Emergency contraceptives are a time-sensitive medication and if taken after the 72 hours the medication may not be effective in preventing an unwanted pregnancy.

Pharmacists are a deciding factor in contraceptive accessibility and availability for patients as they function as the gatekeeper for medications. Some states have health laws that give pharmacists the right to not dispense contraceptives if they have strong moral or religious objection, some only allow this for emergency contraceptives such as Plan B, and other states force pharmacists to dispense contraceptives.

Pharmacists shouldn't be able to exercise their right to not dispense based solely on religious and moral beliefs since pharmacists have a moral duty to the well being of the patient. The patient's reproductive rights should be protected. The Roe v. Wade case

clearly defined reproductive rights for women and legalized abortions throughout the United States (Wick, 2014). The Supreme Court gave women certain constitutionally protected reproductive rights. These rights are clearly violated when pharmacists fail to dispense contraceptives on basis of religious beliefs.

Women who seek emergency contraceptives include a wide range of individuals perhaps the most notable is sexual assault survivors and teenagers. In the U.S. there are 25,000 pregnancies that result from rape (Linden, 2014). These pregnancies could be prevented with access to the emergency contraceptives by passing legislature that forces pharmacists to dispense emergency contraceptives. This is an important public health issue as about 49% of pregnancies are the result of unwanted pregnancy in America. The real issue is teenage pregnancy. 750,000 teens every year become pregnant which creates a cost of $11 billion to the public (NCSL, 2012). These teens that become pregnant are at a higher risk of poverty, dropping out of high school, and having health problems (NCSL, 2012).

Increasing accessibility to contraceptives however can prevent this. Accessibility can be improved by protecting patient's rights by enacting legislature that forces pharmacists to dispense emergency contraceptives without delay. This legislation would essentially amend the Conscience clause that currently protects pharmacists' right to refuse to dispense emergency contraceptives.

Women who are unable to obtain emergency contraceptives are certainly harmed as they will become pregnant and will incur unwanted financial and emotional burdens. Women who don't even become pregnant will have elevated stress levels at the fear of pregnancy. The harm done by pharmacists who refuse to dispense the emergency contraceptives from a utilitarian standpoint far outweighs the benefit of protecting pharmacist's religious rights. Even if pharmacists were able to direct individuals to another pharmacy that would be able to service them it could be far away and individuals would be unable to get the emergency contraceptives they need thus being harmed.

Policy Issue

Legislation to prohibit pharmacists from refusing to dispense emergency contraceptives has opposition. Opponents argue that they have support from the APhA protected by heath provider refusal clauses, religious and moral justification, and the Code of Ethics isn't binding. Those in favor argue that pharmacists adhere to the Code of Ethics, it has legal validation, and society would benefit. The legislation must first pass through some legal hurdles first. The major legal issues include limiting the First Amendment, amending the Conscience Clause, and whether pharmacists are liable for negligence.

Negligence requires four elements: duty of care, breach of that duty, injury, and causation (Showalter, 2015). The federal government defines the pharmacists' standard of care in the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). It mandated pharmacists who filled prescriptions for Medicaid patients must screen prescriptions prior to dispensing, provide patient counseling, and document information (Smearman, 2006). Pharmacists must fill contraceptives under the Pharmacy Consumer Protection Act of 2005 and Access to Legal Pharmaceuticals Act (Smearman, 2006). Pharmacists can be found guilty of negligence especially in rural areas where access to contraceptives is limited. The plaintiff could sue if this resulted in unintentional pregnancy. Pharmacists can be subject to their state's board of pharmacists.

States have pharmacists boards that determine disciplinary action for pharmacists that commit acts of unprofessional conduct and can revoke licenses if found guilty (Arizona, 2013). States enact Conscience Clauses to protect pharmacists from being charged with unprofessional conduct by State pharmacist boards. The Free Exercise Clause however doesn't mandate Conscience Clauses and states may make filling contraceptives mandatory (Smearman, 2006).

The opponents to this legislature believe that they are supported by the APhA, protected by Conscience Clauses, and argue the Code of Ethics isn't applicable. The APha stated that pharmacists have the right to refuse to fill a prescription if there are other health care providers that are willing to provide the service (HPSO, 2005). The backing of a credible professional association supports their argument. Additionally, the First Amendment states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (FindLaw, n.d.).

The First Amendment protects pharmacists' right to refuse to fill prescriptions that are against their religious beliefs. The First Amendment is a fundamental right that cannot be taken away or limited. Opponents are also protected by state-enacted health provider refusal clauses (NCSL, 2012). These clauses were the result of the Roe v. Wade case. The clauses state, "allow doctors or other direct providers of health care to refuse to perform or assist in an abortion" (NCSL, 2012). This right extends to pharmacists.

Additionally opponents to this legislature believe that the pharmacist Code of Ethics is irrelevant since it is vague. The oath pharmacists take are not binding and neither is the Code of Ethics. The Code of Ethics itself was designed to be vague since it encompasses actions that every pharmacist should do and not what they must do. The argument that this action is immoral is thus invalid. The argument for the legislation is supported by the Code of Ethics itself, previous legal rulings, and will have a positive impact on society. The Code of Ethics implies that the patient is the utmost priority, "A pharmacist avoids discriminatory practices, behavior, or work conditions that impair professional judgment, and actions that compromise dedication to the best interests of the patients" (Watt, 2007). The pharmacists' duty is to the patient before themselves. The Code of Ethics supports pharmacists having to dispense emergency contraceptives even though it opposes religious beliefs. This is supported in the Code of Ethics; "A pharmacist promotes the good of every patient in caring, compassionate, and confidential manner" (Watt, 2007).

Pharmacists are morally obliged to fill emergency contraceptive prescriptions as this is in the best interest of improving the patients' health. The legal support for this legislation is that the Conscience Clauses don't protect pharmacists since emergency contraceptives are not drugs that cause abortions. The Conscience Clause gives pharmacists the right to not participate or assist in abortions however emergency contraceptives are prevent pregnancy from occurring.

The First Amendment also is limited in what it can allow for exercising the right to practice religion freely since in this case denying patients the emergency contraceptives do more harm. The societal benefits of this legislation is numerous since it will decrease the amount of unwanted pregnancies in the U.S., decrease teenage pregnancies, and improve accessibility to emergency contraceptives for sexual assault survivors. The

legal problems dealing with this is the protection under the First Amendment. The First Amendment gives the right to exercise religion freely and this is a fundamental right that cannot be deprived from any individuals. This legislation would place limits to the First Amendment right however this legislation would further protect patients' reproductive rights that were given through the Roe v. Wade Supreme Court ruling.

Argument

Conscience clauses are a hot topic in the legal foreground. These laws were put into effect as a result of the Supreme Court ruling of the Roe v. Wade case that legalized abortion throughout the United States. The conscience clauses gave physicians and other health care providers the right to refuse to carry out or assist in abortions due to religious reasons (NCSL, 2012). There are currently six states that have laws allowing pharmacists to do so these states include Arizona, Arkansas, Georgia, Idaho, Mississippi, and South Dakota. Other states such as Illinois, California, New Jersey, Washington, and Wisconsin effectively force pharmacists to fill emergency contraceptives regardless of religious beliefs (NCSL, 2012). There are a handful of states that have currently no state legislation to clarify this grey area causing inconsistency in rulings throughout such states. The solution is to enact legislature that prevents pharmacist from declining to fill emergency contraceptive prescriptions due to religious beliefs. This legislature has moral, legal, and social justifications.

Pharmacists like physicians take an oath however unlike physicians it is not binding however it has moral ramifications as it gives guidelines of what pharmacists "should" do. The Oath of a Pharmacist has one sentence that is worth consideration, "I will consider the welfare of humanity and relief of suffering my primary concerns" (APhA, 2012). This statement implies that a pharmacist is morally bound to the best interests of the patient. This would place a greater emphasis on the needs of the patients rather than the pharmacists suggesting that perhaps religious beliefs should be put aside for the benefit of the patient themselves. The Code of Ethics backs up this claim further in the following statement, "A pharmacist respects the autonomy and dignity of each patient. A pharmacist promotes the right of self-determination, and recognizes individual self-worth" (Watt, 2007). The Code of Ethics for pharmacists imply that pharmacists should focus on the patient rather than themselves and are morally obliged to dispense the emergency contraceptives despite moral or religious beliefs.

Consider this case in Wisconsin in which the pharmacist Neil Noesen not only refused to fill a college student's oral contraceptive prescription and refused to give her the prescription back due to his religious beliefs. As a result of these actions the college student became pregnant. The court ruled that Neil Noesen be reprimanded by the Board of Pharmacy and limited his practice since he acted in an immoral manner that resulted in harm to a patient (Bergquist, 2006).

The legal justification for this legislature is that the Conscience clauses enacted by the state does not protect pharmacists' right to refuse to fill prescriptions for emergency contraceptives. The Conscience Clause gives physicians and other healthcare professionals the right to refuse to participate or assist in abortions (NSCL, 2012). Emergency contraceptives however are not abortion medications. Emergency contraceptives work to prevent pregnancy rather than terminate it as some drugs such as RU-486 (NSCL, 2012). This would disallow pharmacists from refusing to fill patients' emergency contraceptives since it does not protect them under conscience clauses.

Furthermore there are First Amendment limitations as ruled in the Cantwell v. Connecticut case. The Cantwell v. Connecticut case ruled that though this is a fundamental right the right to exercise religion is regulated to protect society from harm (Cornell University Law School, n.d.). This legal case is consistent again with the Jason v. Atillo case that ruled that pharmacists in the state of New York must dispense the emergency contraceptives despite religious beliefs due to the pharmacists' role within health care settings (Journal of Law, Medicine and Ethics, 2009).

Women seek emergency contraceptives for a wide variety of reasons. The most common is unintended pregnancies that almost one half of all pregnancies are not planned (Wick, 2014). Teenage pregnancy is another issue throughout the United States as over 750,000 teens become pregnant each year resulting in a cost to the public of $11 billion (Wick, 2014). Teenagers that become pregnant are put at a higher risk for a myriad of conditions. The United States is ranked number one in teenage pregnancies compared to other equally developed nations however greater access to emergency contraceptives can change this statistic. The sexual assault survivor population would benefit from this legislature as well since there are 25,000 rape-related pregnancies in the United States

(Linden, 2014). These horrible pregnancies can be prevented with improved accessibility to emergency contraceptives. Without access to emergency contraceptives these women are harmed. Women that become pregnant suffer financial and emotional problems as a result, for women that don't become pregnant the sheer thought of pregnancy causes fear and emotional distress that can make life difficult for the woman suffering (Wick, 2014).

The legislation has valid moral, legal, and social justifications that would remove legal ambiguity by setting a clear definitive stance that pharmacists should be forced to dispense emergency contraceptives despite religious beliefs. Medscape surveyed the healthcare and found that 77% of healthcare workers agreed that pharmacists should dispense emergency contraceptives despite religious objections (HPSO, 2005).

Applying ethics to this law from a utilitarian viewpoint would reveal that the benefit of enacting such a legislature would granted make a few religious pharmacists uncomfortable however it will be at the benefit to society and in general women. The legislation would end suffering for women and protect their reproductive rights granted by the Supreme Court following the decision of Roe v. Wade. This legislation would not only empower women, but it would be a giant leap forward to protect patients' rights.

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