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Solution to Birth-Control Controversy: Deregulate the Drugstores by Sheldon Richman

Every now and then we are tested in our dedication to individual liberty. It's happening again. Recently, Gov. Rod Blagojevich of Illinois issued an emergency ruling ordering pharmacists to fill prescriptions for contraception, including "morning-after" pills, despite their convictions against doing so.

The ruling has the force of law for 150 days unless a state panel overturns it, and the governor is likely to ask the state legislature to write it into law.

Going further, the *Chicago Sun-Times* reported, "Blagojevich, through his Financial and Professional Regulation Department, also filed an administrative complaint against Osco on Friday, charging the pharmacy with 'failure to provide pharmaceutical care' and 'unprofessional conduct' for refusing to dispense contraceptives to ... two women in February."

The store could be fined and even be closed.

At issue is whether the state's "conscience clause" exempts pharmacists with conscientious objections from the requirement to fill all prescriptions. Contraception and pro-abortion activists claim the clause applies only to doctors wishing not to perform procedures, such as abortions, that violate their beliefs.

Blagojevich, the newspaper said, made the announcement "surrounded by abortion-rights supporters from around the country." I guess pregnant women, but not pharmacists, have a right to choose.

The governor "said he was taking a stand against a growing national trend of anti-abortion pharmacists refusing to dispense contraceptives." The *Sun-Times* noted that concern that the morning-after pill prevents a fertilized egg from implanting in the woman's uterus and therefore kills a human embryo "has motivated pharmacists in at least a dozen states around the country to refuse to dispense contraceptives." Reports of refusals are becoming common nationwide.

We see in this episode yet another clash between conscience and the welfare state, in which individual rights are subordinated to the politicians' conception of the common good. State

governments license pharmacies, and an assortment of drugs, including birth-control pills, are obtainable only by a doctor's prescription. The entire complex of regulation and prohibition infringes on individual liberty, freedom of association, and free enterprise. The state treats adults like children. If someone defies an instruction, he is punished.

Now this is clear for all to see. One need not oppose abortion to see how Blagojevich's order violates pharmacists' rights. Why should a pharmacist have to sell products he believes to be immoral? Agree or disagree with his convictions, but his freedom to act on them peacefully should be beyond dispute. Where is Voltaire when we need him?

To be clear, it is the owner of the pharmacy, not a pharmacist-employee, who has the right to make the rules. A dissenting pharmacist has the choice to abide by the owner's rules or find other employment.

According to a Planned Parenthood official in Chicago, "A pharmacist's personal views cannot intrude on the relationship between a woman and her doctor." This begs the question. Abstaining from selling something is not an intrusion on any relationship between two other people. Pharmacists are not slaves. If a woman can't buy a pill from one drugstore, she is free to go to another or to shop on the Internet.

Blagojevich's rule requires drugstores to have on duty at least one pharmacist willing to fill birth-control prescriptions. This could lead to an interesting clash of regulations. Suppose a small drug store can't afford two pharmacists on a shift and fires the one with anti-contraception scruples to avoid violating the new rule. Could the fired pharmacist sue his former employer for religious discrimination?

The *New York Times* suggests an alternative to the impasse: "Pharmacists who refuse to fill prescriptions for morning-after pills are inadvertently strengthening the case for providing them as nonprescription medicines on the open shelves. Such availability would allow women to get the pills promptly without going first to a doctor and then to a potentially obstructionist pharmacist."

That's the way to go. Let's stop the state from regulating what the late philosopher Robert Nozick called "capitalist acts between consenting adults."

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