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## **Deregulate the Drugstores** **by Sheldon Richman**

In Illinois the governor has decreed that pharmacists fill all prescriptions brought in by customers. In Arizona the legislature passed a bill to allow pharmacists to refuse to fill prescriptions for birth-control pills on grounds of conscience, even if their employers require it. (The governor vetoed it.)

Here we see the moral bankruptcy of both Left and Right. Faced with peaceful conduct they dislike, both sides call on government to interfere. Individual rights and private property be damned.

Reports of pharmacists refusing to fill prescriptions for the “morning-after” and other contraceptive pills have become common in recent months. According to the *Chicago Sun-Times*, 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.”

How people respond to this refusal speaks volumes about their understanding of individual liberty and their dedication to it.

In April Illinois’s governor, Rod Blagojevich, issued an emergency ruling ordering pharmacists to fill prescriptions for contraceptives, including “morning-after” pills, despite their convictions against doing so. He was expected to ask the state legislature to write his order into law. Lawsuits were immediately filed against the governor. The *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.

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

At issue is whether the state’s “conscience clause” exempts pharmacists with religious objections from the obligation 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.

In Arizona the legislature tried to take a different approach; the same thing is being attempted in Tennessee. Under “conscience clause” bills introduced in those states, no pharmacist could suffer consequences for not filling a birth-control prescription. Presumably, this means that a pharmacist’s employer could not dismiss him for violating the terms of his employment.

We see in these alleged solutions 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 with a doctor’s prescription. The entire complex of regulation and prohibition infringes individual liberty, freedom of association, and free enterprise. The state treats adults like children. If someone defies an instruction, he is punished.

In Illinois the *owner* of a pharmacy is not free to decline to sell contraceptives. In Arizona the owner of a pharmacy would not have been free to require his employees to sell contraceptives. A problem that could be resolved through consent and contract is turned into a political brawl, pitting religious conservatives against abortion and birth-control activists. This is what bully government makes possible.

### **Private ownership and the market process**

Both sides ignore that it is the owner of the pharmacy, not a politician or pharmacist-employee, who has the right to make the rules. That is what property ownership means. A woman seeking the “morning-after” pill can go elsewhere if one drugstore won’t sell her what she wants. Similarly, an anti-contraception pharmacist can find employment elsewhere if he doesn’t like his boss’s rules. Is this a perfect solution? No. As Thomas Sowell says, there are no solutions, only tradeoffs. A small town or rural area may have only one drugstore, making it difficult for a customer or pharmacist to find another seller or employer. Yet that difficulty itself may set the competitive process in motion and produce a resolution.

The alternative to the market process is government control, and we know where that principle leads. Allowing property rights to be violated in one respect is the best way to ensure that they will be violated in other respects.

The owner of a pharmacy who objects to contraception will consider many factors when making a policy about birth-control products. He will have to decide whether the lost profits and

alienation of some customers are worth the moral satisfaction and gain in goodwill from like-minded customers. The point is that it's his decision.

Walgreens, the large national chain, has taken the path that will seem sensible to most people. Pharmacists who work for the chain are not compelled to fill prescriptions that violate their consciences. As a company spokesman put it,

We have more than 15,000 pharmacists working for us nationwide, and they have a variety of beliefs and religious affiliations. We feel it is reasonable to respect those beliefs.

A drugstore has no more moral obligation to sell a woman a "morning-after" pill than Bed Bath and Beyond has an obligation to sell me a beer. In a civilized society people deal with each other by persuasion and accommodation, not force. You'd think we would have learned that by now.

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. Precisely what is at issue is whether *not* selling something intrudes on any relationship between two other people. Pharmacists are not slaves and have no obligation to facilitate a doctor-patient relationship they regard as improper. One does not need to be opposed to birth control or abortion to see this point.

### **Licensing and regulation**

It has been argued that since pharmacies benefit from government licensing they can't complain when they are regulated by the licensing authority. The U.S. Supreme Court took this position in the landmark *Wickard v. Filburn* case, when it ruled that the New Deal's agriculture price-support program could stop a farmer from growing wheat for his own consumption because it would affect prices in the interstate market. As the Court put it, "It is hardly lack of due process for the government to regulate that which it subsidizes."

There are parallels in the pharmacy matter. It is certainly true that licensing is a protectionist device by which professions exclude competition and increase their incomes. The popular idea that licensing benefits consumers is self-serving folklore. We may surmise that fewer drugstores exist than would otherwise be the case in the absence of state licensing. We may further conclude that if the barriers to entry that licensing creates were leveled, fewer people would find themselves with only one choice of drugstore. But does that justify government decrees to force stores to sell things their owners object to? No, it doesn't. The way to remove the bad consequences of government intervention is not to add more government intervention. What's needed is deregulation and freedom — including the repeal of laws that require a doctor's prescription for medicines.

The prescription laws — one of the pillars of what Thomas Szasz calls the Therapeutic State — are the root of this problem. Adults should not need permission to take any drug; women should not need permission to take birth-control pills. That they must get permission from a doctor is just one of the many ways that the government infantilizes people. It is smart to get an expert's advice before taking some drugs, but that is no argument for compelling prescriptions.

The *New York Times* sees the point and suggests a solution to the impasse over birth control:

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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