

1 **Conscience Clause Resolution**

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4 **Background**

5 Under current Maryland law, pharmacists are required to fill all lawful prescriptions  
6 unless they choose not to based on “professional judgment, experience, knowledge, or available  
7 reference materials.” Typically, this would allow a pharmacist to refuse to fill a prescription that  
8 might, in combination with other medication, put the patient at risk of an adverse reaction, or that  
9 might cause an allergic reaction or where the pharmacist was aware of drug abuse or misuse, etc.  
10 Virginia law currently allows a pharmacist to deny filling a prescription without clear limits on  
11 the grounds the pharmacist may invoke to do so. Although the original intent of the Virginia  
12 statute may have been to allow pharmacists to avoid filling fraudulent prescriptions, there is  
13 concern that pharmacists may claim the statute permits them to refuse to fill a prescription on the  
14 basis of their religious or other personal beliefs.

15 Over the last several years there have been reports across the nation of incidents  
16 where pharmacists have refused on moral or religious grounds to fill lawful prescriptions, often  
17 for contraceptives. There have been still other cases in which employees of a pharmacy have  
18 refused to fill a lawful prescription on moral or religious grounds and have then refused to  
19 transfer that lawful prescription to another pharmacist or to another pharmacy, thus preventing  
20 pharmacy customers from obtaining medications prescribed by their physicians. This has  
21 prompted the introduction of bills in the Maryland legislature that would subject pharmacists to  
22 disciplinary action – including suspension or revocation of a pharmacy’s license — for refusal to  
23 fill lawful prescriptions (except as currently permitted) and has also raised calls to consider  
24 “conscience clause” legislation that would allow a pharmacist or pharmacy to refuse to fill a  
25 prescription on moral or religious grounds under certain circumstances.

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27           Federal and state legislatures have considered legislation that would govern whether, and  
28 if so, under what circumstances, a pharmacy or pharmacist may, for moral or religious reasons,  
29 refuse to fill a lawful prescription (laws of this type have been termed pharmacist conscience  
30 clauses). Supporters of such laws maintain that, like physicians covered by similar legislation,  
31 pharmacists should not be forced to engage in activity that violates their personal beliefs.  
32 Opponents, on the other hand, maintain that pharmacy customers have a right to receive  
33 medication prescribed by their physicians and that pharmacists have a duty to serve the public  
34 and cannot interject their personal beliefs to override the medical judgments and lawful  
35 prescriptions of physicians.

36           Proposals for a conscience clause for pharmacists potentially impact three distinct  
37 constituencies: pharmacists, pharmacies and pharmacy customers. Like other aspects of the  
38 health delivery system, pharmacies and pharmacists— like public utilities – are regulated and  
39 licensed entities that do not operate in a fully free market.

40           Consumers need to have the unqualified ability to purchase lawfully prescribed  
41 medications from pharmacies without interference premised on a pharmacist’s personal beliefs.  
42 The availability of lawfully prescribed medications is a matter of public concern; and there  
43 should be no doubt about the rights of the public to have access to lawfully prescribed  
44 medications.

45           Any accommodation designed to permit pharmacies to act on the basis of their religious  
46 or moral beliefs must be subordinated to the right of the public to have prescriptions filled. In  
47 theory, it might be possible to fashion rules under which a pharmacy could, as a matter of  
48 conscience, decline to fill lawful prescriptions without burdening customers. But there is no

49 practical way to fashion such rules without risking the rights of pharmacy customers to  
50 unobstructed access to all lawfully prescribed medications. Pharmacies may make  
51 accommodations for the religious beliefs of pharmacists they employ, but only where such  
52 accommodations do not interfere with the customers' unqualified right to have their prescriptions  
53 filled without delay or potential embarrassment.

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56 For these reasons, the JCRC resolves as follows:

57         Pharmacies have responsibilities akin to public utilities and the JCRC therefore (1)  
58 opposes legislation that would allow a pharmacy to obstruct the decision of a physician to  
59 prescribe any lawful medication for a patient by refusing to fill the prescription on moral or  
60 religious grounds and (2) supports legislation that would require every pharmacy to fill all lawful  
61 prescriptions. JCRC's support for legislation requiring pharmacies to fill all lawful prescriptions  
62 is not intended to preclude a pharmacy from adopting a policy to accommodate the religious  
63 objections of individual employees to dispensing particular pharmaceutical products so long as  
64 all lawful prescriptions are promptly and conveniently filled with no inconvenience to the  
65 pharmacy customer – for example where pharmacy policy forbids employees unwilling to fill  
66 lawful prescriptions on religious grounds from having direct contact with patients or physicians  
67 and their staff.

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