

**TESTIMONY OF THE ACLU OF ILLINOIS IN SUPPORT OF
PROPOSED PERMANENT RULE (68 ILL. ADM. CODE 1330.91(k))**

June 2, 2006

My name is Mary Dixon, and I am the Legislative Director of the ACLU of Illinois. I am here today to offer the ACLU's support for the proposed permanent rule requiring Division I pharmacies to post a sign notifying customers of their rights with respect to their prescriptions for contraception, proposed Section 1330.91(k).

The ACLU of Illinois is a non-profit, non-partisan organization, dedicated to safeguarding freedom, liberty, justice and equality for all within the State of Illinois and throughout the United States. The ACLU's Reproductive Rights Project strives to make certain that all in our society have access to the full range of reproductive healthcare, including safe and effective contraception.

Last year, the ACLU provided testimony in support of the now-permanent rule that codified the duty of Division I pharmacies to dispense prescription contraceptives. We now offer our support for the new proposed rule because we believe it is a vital tool for ensuring that retail pharmacies comply with their obligation to dispense contraceptives – including emergency contraception – to patients presenting valid prescriptions.

With the adoption of the pharmacy mandate last year, the Department recognized the importance to Illinois women of reliable access to contraception. The new proposed regulation will give women the tools to ensure that their pharmacies are complying with this very important law. Under the proposed rule, each Division I pharmacy must display a notice informing customers of their right to have their prescriptions for contraception filled without hassle, lecture or delay. Additionally, this notice must include information instructing the customer on how to file a complaint with the Department if she believes her rights have been violated. The adoption of this new proposed regulation is a necessary step in ensuring that all pharmacies comply with the mandate on prescriptions for contraception.

Safe and effective contraception is a critical component of basic preventative health care for women. Since 1965, when the Supreme Court

first recognized a fundamental right to contraception,ⁱ maternal and infant mortality rates have dropped by more than two thirds.ⁱⁱ Access to safe and effective contraception gives women control of their fertility, thus empowering them to make education and employment choices that have long-term health, economic, and social benefits for them, their families, and their communities.

For most women, contraception is not merely an option or a lifestyle choice, but an essential component of their health care. The average American woman is fertile for approximately three decades of her life – from age 15 to age 44.ⁱⁱⁱ Without the use of contraception, she could expect to become pregnant twelve to fifteen times during this period.^{iv} Perhaps understandably then, virtually all – 98 percent – of all American women aged 15-44 who have ever had sexual intercourse have used at least one method of contraception.^v

In addition, some oral contraceptive pills provide significant benefits other than birth control, and many women are prescribed this medication for such purposes. For example, the pill is effective in controlling menstrual cycle irregularities and in reducing premenstrual symptoms. Long-term use can suppress pain associated with endometriosis and decrease the risk of ovarian cancer.^{vi}

Prescription contraceptives are among the safest and most effective methods of contraception. Oral contraceptive pills have a much lower failure rate than methods of contraception sold over the counter, such as condoms.^{vii} A pharmacist who stands in the way of a woman seeking to fill a prescription for contraception is interfering with a woman's decision, made in consultation with her doctor, that prescription contraception is the most appropriate and most effective method of contraception for her.

The emergency contraceptive pill – marketed as Plan B – is a time-sensitive medication that is effective only if taken within days of sexual intercourse.^{viii} A pharmacist refusing to fill a prescription for emergency contraception places a significant obstacle in the path of a woman at risk for unintended pregnancy, as she seeks to access, within this narrow timeframe, critical medication that can prevent pregnancy.

An unintended pregnancy can be a frightening and life-altering event with significant consequences for women and their families. The newborn

children of women who carry their unintended pregnancies to term are more likely to be premature, small for gestational age, or low birth weight.^{ix} A newborn baby comes at substantial expense and stress to a family, particularly so when that family was not planning on having the child. An unplanned pregnancy can also interrupt or completely sidetrack a woman's education or career training plans, negatively impacting her earning capacity. For this reason, the Supreme Court has recognized that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."^x Through the consistent and effective use of contraceptives, women can avoid these negative consequences by more effectively planning the number and timing of their pregnancies.

The new proposed regulation will empower pharmacy customers by informing them of their rights under the pharmacy mandate, Section 1330.91(j), and outlining a mechanism through which they can inform the Department if those rights have been violated. At the time that the pharmacy mandate was being debated last year, many pharmacists stepped forward to discuss their long-standing policy of refusing to fill prescriptions for contraception on religious grounds. Because Illinois women have experienced these refusals for years, many women may not know that a pharmacy now is violating the law if it refuses to fill such a prescription. The proposed regulation – by requiring a notice at the pharmacy counter – would inform women of their rights at the time and place they need the information the most – when they are trying to fill their prescriptions. By informing customers how to file a complaint against a pharmacy, the proposed regulation will be an effective method of identifying those pharmacies that are not complying with the law.

The proposed regulation will place only a minimal burden on pharmacies. The proposed regulation requires that the sign be only the size of a sheet of paper. Posting such a notice will require little staff time and effort, and little, if any, expense for the pharmacies. On the other hand, providing customers critical information about the law and a mechanism for raising complaints substantially increases the ability of the Department to identify pharmacies that are breaking the law. With every additional pharmacy that comes into compliance, the Department moves one step closer to achieving the goals of the pharmacy mandate – guaranteeing that Illinois women have reliable access to medication essential to their health care. The benefits of the proposed regulation to the women of Illinois

clearly outweigh any inconvenience pharmacies may experience in complying with it.

For these reasons, the ACLU of Illinois strongly supports the proposed regulation.

Thank you.

ⁱ Griswold v. Connecticut, 381 U.S. 479 (1965).

ⁱⁱ Planned Parenthood Federation of America, Griswold v. Connecticut – The Impact of Legal Birth Control and the Challenges that Remain (June 2005), at <http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/birthcontrol/fact-000501-griswolddone.xml>

ⁱⁱⁱ William D. Mosher et al., Use of Contraception and Use of Family Planning Services in the United States: 1982-2002 3 (Advance Data from Vital & Health Stat. No. 350, Dec. 10, 2004).

^{iv} Washington Business Group on Health, Family Health in Brief, Promoting Healthy Pregnancies: Counseling and Contraception as the First Step, at 1 (Aug. 2000).

^v Mosher, supra, note 3, at 5.

^{vi} F. Gary Cunningham et al., Williams Obstetrics 731 (22nd ed. 2005); American College of Obstetricians and Gynecologists, Guidelines for Women's Health Care 157 (2d ed. 2002).

^{vii} Williams Obstetrics, supra note 6, at 727; Guidelines for Women's Health Care, supra note 6, at 158.

^{viii} Williams Obstetrics, supra note 6, at 745.

^{ix} Kathryn Kost et al., The Effects of Pregnancy Planning Status on Birth Outcomes and Infant Care, 30 Fam. Plan. Persp. 223, 228-29 (1998); Lorraine V. Klerman, et al., Family Planning: An Essential Component of Prenatal Care, 50 J. Am. Med. Women's Assoc. 147, 151 (1995); The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families 70-71 (Sarah S. Brown & Leon Eisenberg eds., 1995).

^x Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992).