

PARTICULARS

On August 9, 2016, M.S.,¹ acting as her daughter's agent, went to the Walgreens pharmacy that regularly fills her family's prescriptions (Store #4911; 6000 Coors Blvd NW) to have three prescriptions filled for her teenage daughter. M.S.'s daughter was prescribed a mild pain reliever, an anti-anxiety medication, and Misoprostol by her medical provider in preparation for a procedure to insert an intrauterine contraceptive device (IUD). When picking up the prescriptions at the pharmacy counter, M.S. was told that the pharmacy had filled two of the three prescriptions, but that she would have to travel to a different Walgreens location for the third medication, Misoprostol. Misoprostol is a medication commonly used to treat or prevent stomach ulcers, but it is also prescribed for reproductive health purposes, including cervical preparation before IUD insertion. When M.S. asked for an explanation, she was told that the pharmacy did, in fact, have the medication in stock, but that the pharmacist on duty, Jesse Garrett (Lic # RP00008211), would not fill the prescription because of his "personal beliefs."

After being turned away and sent to another location, M.S. had no choice but to drive to the alternate Walgreens pharmacy in rush hour traffic to pick up the medication, which was a significant inconvenience for her. Her daughter was not able to wait to access the medication because her appointment was scheduled for the following day, and she was instructed to take the medication the night before her appointment. While picking up the prescription at the alternate pharmacy, M.S. considered Mr. Garrett's refusal to fill her daughter's prescription. The more she thought about the refusal the more frustrated and betrayed she felt.

Her disbelief and outrage was so strong that she returned to the original Walgreens and asked to speak to a manager. After informing him of the complaint, the manager accompanied her to speak with Mr. Garrett directly. When M.S. asked Mr. Garrett why he was denying her daughter access to a valid prescribed medication, he told her that he was refusing to fill the prescription because of his personal beliefs. When M.S. asked for clarification, Mr. Garrett explained in a judgmental tone that he was refusing to fill the prescription because he had a "pretty good idea" for what purpose the medication would be used. Mr. Garrett's statements left M.S. with the sound belief that he was refusing to fill M.S.'s daughter's prescription because he believed the prescription would be used for M.S.'s daughter's reproductive healthcare.

This experience was very upsetting and caused M.S. to feel judged, disrespected, embarrassed, and intimidated. She also felt protective of her daughter, who had a right to receive the medication prescribed to her without shame. Previous to this incident, M.S. and her daughter felt safe asking pharmacists any and all questions related to their medications, but this has damaged their trust and confidence in Walgreens, pharmacists, and pharmacy staff. M.S. was hesitant to tell her daughter about

¹ We use the complainant's initials "M.S." throughout to protect her minor daughter's privacy in accordance with permission granted by the Department of Workforce Solutions on May 23, 2017.

the refusal because of how extremely judged she felt after the refusal. M.S. did not want her daughter to feel judge or ashamed because of the incident. When M.S. told her daughter about the refusal, her daughter felt disbelief and anger. M.S.'s daughter was very uncomfortable and felt like she was having to ask Mr. Garrett's permission to access contraception. M.S. and her daughter initially wanted to move all future prescriptions away from that store to avoid these feelings in the future.

In the weeks following this incident, a Walgreens District Manager contacted M.S. He committed to retraining all of the pharmacists, store managers, and assistant managers in the district with respect to the protocol and words to be used when refusing to fill a prescription because of personal beliefs. However, he also stated that the existing protocol in these situations is **to transfer the prescription to another pharmacy** and send the customer to retrieve it at an alternate location.

Refusing to fill prescriptions that are directly tied to the attributes that make women different from men—i.e., the ability to become pregnant – constitutes sex discrimination. M.S. understood Mr. Garrett's denial of services to be based on his assumption that her daughter would use the medication for a reproductive health purpose to which he was personally opposed. Indeed, the medication was prescribed to assist with a contraceptive procedure that only women receive. It is inconceivable that the same denial of service would have occurred if Mr. Garrett had assumed that the medication would be used to treat stomach ulcers – the only indicated usage for men. In other words, had the patient been a man, rather than M.S.'s daughter, it is reasonable to assume that the prescription would have been filled at this location without delay.

The New Mexico Human Rights Act states: "It is an unlawful discriminatory practice for...any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap..." N.M.S.A. § 28-1-7 (emphasis added). As a New Mexico business, Walgreens is a public accommodation, and cannot refuse to provide its services to anyone on the basis of their sex. *See Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013). When Walgreens refuses to provide a medication because it is prescribed for a purpose related to women's reproductive health, it engages in unlawful sex discrimination under the New Mexico Human Rights Act. Furthermore, New Mexico state regulations define sex discrimination as discrimination on the basis of "pregnancy, childbirth, or related condition." NMAC § 9.1.1.

In 2012, the ACLU of New Mexico (ACLU-NM) and the Southwest Women's Law Center (SWLC) contacted Walgreens about instances of similar discrimination when Walgreens' pharmacists in Albuquerque refused to fill prescriptions for clients' contraceptives on at least two separate occasions. After many conversations, Walgreens provided the ACLU-NM and SWLC with the following assurance (see Appendix A):

To balance the needs of our pharmacists and our customers, Walgreens has developed appropriate policies and procedures for our pharmacies to assure that these

prescriptions, for example, birth control, are handled ***as efficiently as other prescriptions without imposing any burden on the customer*** (emphasis added).

As a result of these assurances, ACLU-NM, SWLC, and their clients agreed not to move forward with filing complaints under the New Mexico Human Rights Act at that time. However, the experience of M.S. and her daughter raise concerns about Walgreens' current practices and the company's commitment to the assurances made in 2012.

Following the discrimination experienced by M.S. and her daughter, the ACLU-NM and SWLC wrote to Walgreens to alert the company of this incident, ask for clarification about the policies and procedures referenced in their 2012 assurance, and demand that action be taken to prevent this type of discrimination in the future. In the response, dated April 24, 2017 (see Appendix B), Walgreens acknowledges that when one of the pharmacists employed by the company refuses to fill a prescription and another pharmacist is not available at the same location, "store management can arrange to have it filled at the nearest pharmacy or picked up when another pharmacist is on duty." Alarming, Walgreens maintains that M.S. and her daughter were sent to an alternate pharmacy location "in accordance with company policy."

Refusing to serve a woman and forcing her to travel to an alternate pharmacy for her medication is discrimination, no matter how conveniently located the alternate pharmacy may be. In addition to the significant inconvenience of having to travel to another location, M.S. and her daughter experienced the real and lasting emotional impact of being denied a service and turned away because of sex. This is exactly the kind of discriminatory experience that the New Mexico Human Rights Act is intended to protect against.