

NEW YORK STATE DEPARTMENT OF EDUCATION,
OFFICE OF THE PROFESSIONS

MARC HELLER, M.D., CLAUDINA ASHELMAN-
OWEN, N.P., and COLLEEN SHAW, P.A.,

Complainants,

-v-

MATT WEAVER, ANDREA BARCOMB, and
LISA MCGINNIS,

Respondents.

SECOND COMPLAINT OF COLLEEN SHAW, P.A.

COLLEEN SHAW, a Physician Assistant licensed to practice medicine in New York State, being duly sworn, states the following:

1. I hereby reaffirm and reallege the statements contained in paragraphs 1-17 of my Complaint dated August 9, 2006 filed previously before this body.
2. I further incorporate the statements regarding Plan B Emergency Contraception (“EC”) contained in Paragraphs 15-28 of the Complaint of Dr. Marc Heller, dated August 9, 2006, filed previously before this body (hereinafter “Complaint of Marc Heller”).
3. The statements made in the Complaints dated August 9, 2006, concerned a pharmacist named in that complaint as “Lisa McGuinness.” I have since learned that the proper spelling of the pharmacist’s name is “Lisa McGinnis.”

Factual Allegations:

4. It is the standard of care for all providers of medical care at PPMH to provide advance prescriptions to patients of EC. See Complaint of Marc Heller, at ¶ 26. Under this standard of care, the providers at PPMH offer a prescription for EC to all sexually active female patients, regardless of the reason for their visit, and include three to five refills in all prescriptions that are written for EC. Practitioners write prescriptions for EC with three to five refills so that women have advance access to EC before an emergency need for it arises, and in the event such an emergency occurs when the PPHM offices are closed for business. This is because EC is more effective the sooner it is taken after unprotected sex.

5. On February 26, 2006, Ruth Ciccateri, a Nurse Practitioner who practices at PPMH and who was covering for me on that day, wrote a prescription for a patient for one pack of EC with five refills. Ms. Ciccateri also works in collaboration with Dr. Heller.

6. On March 15, 2006, the patient presented her prescription at the RiteAid pharmacy in Gloversville, New York, located at 169 North Main Street, Gloversville, New York, 12087.

7. The same day, on March 15, 2006, my office received a telephone call from the pharmacy. Sue Hendler, another Registered Nurse who works at PPMH, took the call, and left me a message in a telephone-message notebook which contained the following statement: “Dear Colleen! I got a call from R.A. pharmacy (male pharmacist) who said his supervisor (guess who ?? hint... initials LMcG) would not let him fill this pt’s rx for Plan B because it was written on 2/22. I asked why that was a problem and he

said his supervisor viewed that as a 'prn' which she won't fill for Plan B. I was able to call a verbal in for [the patient] but with no refills. They gave her back her rx. Sue".

(See exhibit A.)

8. I called the patient to discuss the situation with her. The patient confirmed that when she had returned to the pharmacy on March 16, 2006, the pharmacist on duty had provided her with a single package of Plan B, but informed her that the pharmacy would not fill the prescription more than one time, and that her physician should have known that. She informed me that the pharmacist had informed her that the prescription she had from PPMH containing five refills would therefore not be honored, and that he had returned the original prescription to her, along with a "post-it" note with the words "Lisa McGinnis, 0 refills for Plan B" written on it.

9. The patient told me that at the time, she had felt very upset, and believed that there had been a problem with the way the prescription had been written by Ms. Ciccateri.

10. I informed the patient that the prescription had been properly written, and that it was good medical practice to include refills on prescriptions for Plan B. I further informed her that there had been difficulties with some pharmacists refusing to honor refills in prescriptions for Plan B because of their own personal beliefs. I encouraged her to call our office if she ever needed another dose of Plan B. I then asked the patient if it would be possible to bring the note and the original prescription to our office, and she agreed to do so. She brought the prescription and the note to our office a few days later.

11. I did not call the pharmacist or Lisa McGinnis at that time, because I recalled the conversation I had with her the previous month, in February 2006 that was the subject

of the Complaint filed previously with this office. Ms. McGinnis had made her views clear during that conversation, and I did not believe that I would be able to change her mind.

12. From that point on, I warned my patients to whom I prescribed Plan B that the Rite Aid pharmacy in Gloversville had problems with filling prescriptions for Plan B, and I advised my patients to fill their prescriptions elsewhere if possible. I instructed other providers at the Gloversville office of PPMH to do the same.

13. The refusal of the pharmacist on duty and of Lisa McGinnis to fill the prescription as written harmed my patient and interfered with the practice of medicine at PPMH in the following ways: (a) it prevented me and PPMHH from providing the best standard of care in a timely fashion; (b) it prevented my patient from receiving the best standard of care in a timely fashion; (c) it interfered with the relationship of trust and confidence between myself and my patient by undermining my patient's trust in her own healthcare provider; (d) it diminished my reputation and that of PPMH in the patient community for being able to provide proper prescriptions; (e) it reduced time I had available for my other patients; and (f) it denied my patient equal access to the public accommodations provided by the pharmacy.

14. Based on my past interactions with Ms. McGinnis as alleged in my Complaint dated August 9, 2006, I believe that these harms were the direct result of the Ms. McGinnis's factually and medically unwarranted assumptions about my patient's sexual practices and history, her moralistic judgments about women's normative sexuality, and her ignorance regarding the standard of care for EC.

Relief Requested:

15. Based on the occurrences described in the paragraphs above, I respectfully request that the office of the Professions discipline Ms. McGinnis for professional misconduct.

16. I further respectfully request that the Board of Pharmacy issue a clarification of its Guidance specifying (a) that the proscription against abandoning or neglecting a patient includes a duty to log and dispense refills for all duly written prescriptions, and (b) that refusals to provide professional services to patients on the basis of sex violates New York State law prohibiting discrimination in public accommodations.

Dated March _____, 2007

Respectfully Submitted,

Colleen Shaw, PA

Sworn and subscribed before me this _____ day of March, 2007

Notary Public