

**Commonwealth of Massachusetts
Department of Public Health**

**FREQUENTLY ASKED QUESTIONS
ABOUT IMPLEMENTATION OF CHAPTER 91 OF THE ACTS OF 2005
“TIMELY ACCESS TO EMERGENCY CONTRACEPTION”**

Issued March 2006, updated July 2007

Pharmacy Training, Filing and Practice:

1. *Is a pharmacist required to provide emergency contraception to a pharmacy customer who does not have a prescription?*

Answer: No.

Dispensing under a standing order is voluntary. In accordance with M.G.L. c. 94C, § 19A, a trained pharmacist may now alternatively dispense emergency contraception pursuant to a standing order developed by an actively practicing registered physician, See Policy No. 2006-1 of the Board of Registration in Pharmacy (Board).

Prior to the enactment of Chapter 91 of the Acts of 2005, a prescription from an authorized prescriber in compliance with Department regulations was required to dispense emergency contraception.

2. *Can a pharmacist dispense Plan B pursuant to a standing order, if s/he completed training required by M.G.L. c.94C s.19(A)(c) prior to implementation of the law on December 14th, 2005 (i.e., without further training)?*

Answer: Generally, yes, if the pharmacist has substantively completed the training prerequisites.

The law specifies training content areas that must be mastered prior to a pharmacist dispensing emergency contraception per a standing order. Board Policy No. 2006-1 requires that proof of training must be on file (readily retrievable) at the pharmacy.

Those pharmacists who received training prior to Dec. 14, 2005 are advised to consult with the Accreditation Council for Pharmacy Education (ACPE) or such approved college or school of pharmacy where the pharmacist received training to make sure that such institution has provided the pharmacist with requisite proof of training on the following topics:

- referring patient for additional service and follow-up;
- quality assurance; and
- proper documentation.

If a certificate of completion issued by the ACPE or approved college or school of pharmacy is dated before December 14, 2005, the ACPE or approved college or school of pharmacy that issued the certificate of completion may provide the pharmacist with additional documentation on its

letterhead that clarifies that the training offered on a specific date covered the topics required by Board Policy No. 2006-1.

If a pharmacist does not have requisite proof of training from the ACPE or approved college or school of pharmacy where he or she received training or the training curriculum did not cover requisite topics, the pharmacist is advised to seek further training to document that he or she possesses requisite qualifications.

3. *If a pharmacist works in multiple locations, as a 'floater,' does the pharmacist need proof of training to be readily retrievable in each location (i.e., not just in his/her home location)?*

Answer: Yes. A pharmacist must have proof of training readily retrievable at each location at which the pharmacist dispenses emergency contraception pursuant to a standing order.

The best practice is for the pharmacist to file a hard copy of the training certificate with each worksite so that the pharmacy may make such proof available to Department of Public Health (DPH) inspectors upon request. Alternatively, if the pharmacy where the pharmacist works can readily retrieve or download a copy of the training certificate(s) of completion via the web (using a unique identifier assigned by an approved college of pharmacy), or any other electronic means of transmitting proof of training, such as by fax or e-mailed attachment, maintenance of a hard copy at each work site is not necessary.

4. *How will a pharmacist know that a particular standing order signed by a particular physician has been filed with the Board of Registration in Pharmacy, and is ready for use?*

Answer: See best practice suggestion(s) for physicians (Question #10 below).

5. *If a pharmacy has a standing order on file at the pharmacy and at the Board of Registration in Pharmacy that authorizes the dispensing of Plan B per the standing order by any qualified pharmacist practicing at that location, must all pharmacists who practice at that pharmacy location dispense Plan B under the standing order?*

Answer: No. The state law on timely access to emergency contraception does not require all pharmacists employed at a particular location to dispense under a standing order. Conditions of employment and scheduling of shifts of pharmacists who opt to participate are matters left to the management prerogative of the employer.

6. *Is it necessary for minors (persons under age 18) to obtain parental consent to obtain emergency contraception medication from a pharmacist/pharmacy that is authorized to dispense under a standing order?*

Answer: No. Chapter 91 of the Acts of 2005 does not mandate parental consent for teens to obtain emergency contraception from a pharmacist/pharmacy. The law does not prevent a teen from involving her parent.

7. *What if there are "competing" SOs at a particular location for example, if a physician signs a SO for a particular pharmacist to provide EC for up to 120 hours, and then another physician signs a SO for the whole location to provide EC for up to 72 hours, after unprotected sex. Which standing order should the pharmacist follow?*

Answer: This is a management question for the pharmacy to address, using professional judgment to provide the best care and ensure an opportunity for treatment to the patient in need of timely access to EC.

8. *Can the pharmacist provide a second dose of EC to a woman who vomits her dose within 2 hours of taking it?*

Answer: The pharmacist should follow the instructions regarding repeat dosage on the physician's standing order that is on file at the pharmacy. If repeat dosing is not on the standing order (SO), the pharmacist may consult the physician who signed the order.

See DPH Model Standing Order which states: "If vomiting occurs within two hours of administration an anti-emetic should be considered and the dose can be repeated."

9. *Can a pharmacist provide anti-nausea medication to a woman who requests EC?*

Answer: Yes. A pharmacist may recommend an over the counter (OTC) anti-nausea medication, as a part of their standard practice of counseling and treating any patient who presents with a prescription that might induce nausea.

State law does not require or prohibit the pharmacist to recommend an OTC anti-nausea medication that is not explicitly stated in the standing order. If the customer prefers a prescription medication, the pharmacist can either contact the woman's primary care provider or the physician who signed the standing order.

Standing Order and Physician Practice:

10. *How will a physician know that a particular standing order has been filed with the Board of Registration in Pharmacy (Board), and is ready for use?*

Answer: Observe the following best practice suggestion(s).

Best practice(s):

- Send the standing order via certified mail with return receipt requested in order to track delivery and receipt of the order. (The Board will *not* provide alternative written or oral confirmation of receipt of the standing order on file.)
- On each standing order transmitted to the Board, include (i) the effective date and (ii) the date that the order is transmitted to the Board for filing.

11. *Does a physician need to verify that a pharmacist has been trained before signing a standing order with that pharmacist?*

Answer: Generally, no, but a physician may wish to verify training before signing a standing order.

Under M.G.L. c.94C, s.19(A), pharmacists must complete requisite training before dispensing emergency contraception per a standing order. Board Policy No. 2006-1 requires that proof of training must be on file (readily retrievable) at the pharmacy.

State law does not require or prohibit a physician from seeking to verify that an individual pharmacist has completed training *before* signing a standing order.

Nothing prohibits a licensed physician from providing a licensed pharmacy with a standing order that is signed and dated in advance of the date that an individual pharmacist working at such pharmacy completes requisite training, so long as there are adequate personnel and management systems in place at the pharmacy for use of the standing order. A pharmacist commencing employment at a pharmacy that has a standing order on file for use by trained pharmacists may dispense emergency contraception pursuant to the standing order provided that such pharmacist has completed requisite training.

12. *If a physician signs an order authorizing all qualified pharmacists practicing at a pharmacy located at one particular location to dispense per the physician's standing order and one of the pharmacists who works at that pharmacy also works at another pharmacy location that does not have a standing order on file, can the pharmacist "carry" the standing order from location to location so as to "transfer" the physician's standing order to different location(s) that do not have a standing order on file?*

Answer: No. See FAQ for pharmacists (Question #3 above).

Board Policy No. 2006-1 specifies that a copy of the Standing Order must be maintained on file (readily retrievable) at each participating pharmacy site.

If the physician's standing order is written to authorize a specific individual pharmacist to dispense per the standing order at any pharmacy where he or she practices, copies of the standing order must be on file at each pharmacy location where such pharmacist practices.

13. *Will it still be necessary for physicians to write prescriptions for emergency contraception now that Plan B may be available at some pharmacies via a standing order?*

Answer: Yes.

- Nothing in the law limits or otherwise changes a physician's authority to write a prescription for Plan B or other prescription medication.
- It is not certain that an individual patient in need of emergency contraception will be able to obtain emergency contraception medication from a pharmacy without a prescription. Access

under the state law is contingent on a number of factors including but not limited to: (1) pharmacies “opting in” to dispense under a standing order, and (2) a pharmacist with the requisite qualifications and training being available and ready to serve a pharmacy customer who arrives without a written prescription.

- In cases where a treating physician (or pharmacist acting under a standing order) determines in his or her professional judgment that Plan B is contraindicated but another prescription medication is necessary, a prescription is required.
- In cases where a patient under the physician’s care seeks a prescription that can be filled and refilled in the future (e.g., if contraceptive method fails while traveling), the best practice for ensuring access to emergency contraception is to give the patient a prescription.

14. The DPH model standing order asks the physician to “List Pharmacy or Corporate Entity.”

(A) Does this mean that a physician can authorize all pharmacists who work at a particular location (e.g. pharmacy ABC located at 123 Washington Street, Town T, MA)?

(B) Can a physician use a standing order to authorize a corporate entity that operates a chain of pharmacies (e.g., the ABC Corporation that owns and operates 20 licensed pharmacies in one or more geographic locations in the Commonwealth)?

Answers to 14 (A) and (B): Yes.

The scope of the standing order is a matter that is left to the discretion of the physician signing the standing order. A physician may sign a standing order that authorizes qualified pharmacists practicing at a particular pharmacy location or qualified pharmacists who are employed by a particular corporate entity to dispense emergency contraception per his/her standing order. Or a physician may choose to sign a standing order authorizing one particular pharmacist.

In any case, Board Policy No. 2006-1 requires that a copy of the Standing Order must be maintained on file (readily retrievable) at each participating pharmacy site.

15. Does a physician who authorizes dispensing per a standing order increase his/her risk of liability?

Answer: Participating physicians (and participating pharmacists) are advised to consult their legal counsel and/or insurance agent regarding risk management issues and adequacy of professional malpractice insurance.

16. Is there increased liability for the physician if his/her standing order is written so as to authorize a participating pharmacist to dispense to pharmacy patients who report having sexual intercourse within the preceding 120 hour period of time if the physician and the pharmacist know that for maximum effectiveness emergency contraception should be administered as soon as possible and, if possible, within 72 hours of sexual intercourse?

Answer: Participating physicians (and participating pharmacists) are advised to consult their legal counsel and/or insurance agent regarding risk management issues and liability issues.

Pharmacist Dispensing Pursuant to the Standing Order, Assessment and Screening

17. *When a pharmacist dispenses EC pursuant to the standing order does the pharmacist have to reduce the prescription to writing?*

Answer: Yes.

18. *How should the pharmacist label EC dispensed pursuant to the standing order?*

Answer: The pharmacist should label the product as they would any other prescription product.

19. *What information does a pharmacist need from the patient in order to dispense EC pursuant to the standing order?*

Answer: The pharmacist must obtain a patient name. The pharmacist *may* request the additional patient information listed in M.G.L. c.94C, s. 21A, specifically,

- (1) the address, telephone number, date of birth or age, and gender;
- (2) individual history where significant, including known drug allergies and drug reactions, and a comprehensive list of medications and relevant devices; and
- (3) any additional comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.

20. *Can pharmacists charge a counseling or assessment fee?*

Answer: Chapter 91 of the Acts of 2005 neither authorizes nor prohibits a counseling or assessment fee.

21. *Can the pharmacist screen/assess a woman for EC over the phone?*

Answer: Yes. A pharmacist may screen/assess a woman for EC over the phone.

22. *Can someone other than the patient pick up EC dispensed pursuant to a Standing Order?*

Answer: Yes, as with any other prescription product someone other than the patient may pick up the prescription.

23. *Can a pharmacist dispense EC pursuant to a standing order to a person who requests EC for someone other than themselves?*

Answer: No. A pharmacist needs to assess the patient either in person or over the phone before dispensing EC pursuant to a standing order. (See also Questions 21 & 22).

24. *What should a pharmacist do if a pharmacy customer discloses that the need for emergency contraception results from sexual assault?*

Answer: Observe the following best practice suggestion(s).

Provide standard medication screening and offer pharmaceutical counseling consistent with M.G.L. c.94C, s.21A and 247 CMR 9.07. If a patient reports no contraindications, dispense medication per a standing order or, if customer presents a prescription, per the prescription.

Provide appropriate referrals:

For medical treatment and care, refer the pharmacy customer to a local rape crisis center and/or hospital emergency department.

- For nearest Rape Crisis Center, see: <http://www.mass.gov/dph/fch/sapss/sites.htm>
- For nearest DPH-designated hospital emergency room that uses DPH-certified Sexual Assault Nurse Examiners to collect forensic evidence, see: <http://www.mass.gov/dph/fch/sane/index.htm>

For *confidential* rape crisis counseling, refer the pharmacy customer to *confidential* rape crisis hotline:

- For hotline numbers, see: <http://www.mass.gov/dph/fch/sapss/sites.htm>
- For the statewide [Spanish Language Helpline](#), call Llámanos: (800) 223-5001

Note: Under Massachusetts law, information transmitted in confidence by and between a victim of sexual assault and a sexual assault counselor including all information received by the sexual assault counselor which arises out of and in the course of such counseling shall not be subject to discovery and shall be inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper or memorandum relates. See M.G.L. c.233, s.20J. The statutory definition for “sexual assault counselor” does not include a pharmacist and the statutory privilege codified in Section 20J does not apply to pharmacy conversations or records maintained by the pharmacist.

Pharmacist Reporting:

25. *Are pharmacists mandated reporters for purposes of suspected cases of child abuse and neglect to the Department of Social Services under Massachusetts law (M.G.L. c.119, s.51A)?*

Answer: No.

Other:

26. *If a woman obtains emergency contraception from a pharmacist pursuant to a standing order, will MassHealth (Medicaid) or private insurance pay for it? Will insurance also pay if she requests emergency contraception for the future, before she needs to take it?*

Answer: The law does not address matters related to insurance coverage and benefits.

Currently, MassHealth (Medicaid) provides coverage for emergency contraception. For questions regarding MassHealth coverage and benefits and applicable co-payment for physician visits and for prescription medication, call MassHealth Customer Service Center: **1-800-841-2900** (TTY: 1-800-497-4648 for people with partial or total hearing loss).

- Questions regarding private insurance products, coverage and benefits should be addressed to your health insurance plan.

27. *Do DPH regulations found at 105 CMR 130.1040 to 130.1043 regarding timely access to emergency contraception for rape survivors only apply to emergency departments of hospitals?*

Answer: Yes. Amendments to the DPH hospital licensure regulations only apply to emergency departments of hospitals.

28. *If a woman calls her doctor's office in need of emergency contraception, does the law (Chapter 91 of the Acts of 2005) require her doctor or other licensed professionals in that medical practice to give the caller a prescription or provide her with information on where she can obtain it?*

Answer: No. The legislature did not change the physician's authority to prescribe Plan B or other prescription medications for emergency contraception.

The statutory and regulatory requirements regarding provision of emergency contraception for female rape victims only applies to hospital emergency departments.

29. *Are there additional DPH materials that are available to pharmacists and health care providers?*

Answer: Yes. Some materials are posted on the DPH and the Board of Registration in Pharmacy websites. Please also refer to the Massachusetts Emergency Contraception Network's website for additional materials for pharmacists and healthcare providers that are specific to Massachusetts: www.massECnetwork.org.

30. *Who in the Department of Public Health handles questions regarding Pharmacy and Emergency Department access to emergency contraception?*

Contact Information

- Public/Consumers:
 - [Family Planning Program](#), Karen Edlund 617-624-6012
 - [Sexual Assault Prevention and Survivor Services Program](#), Marci Diamond 617-624-5457
- Hospitals:
 - [Division of Health Care Quality](#), Timothy MacIntyre 617-753-8000
- Pharmacists/Pharmacies:
 - [Board of Registration in Pharmacy](#), 800-414-0168
 - [Drug Control Program](#), 617-983-6700
- Physicians/Providers:

- [Board of Registration in Medicine](#), 617-654-9800