



american society for
emergency contraception

PEER-TO-PEER DISTRIBUTION OF EMERGENCY CONTRACEPTION (EC) ON CAMPUS: LEGAL ISSUES

QUICK FACTS

Emergency contraception is a way to prevent pregnancy that can be used after unprotected sex. Peer-to-peer networks fill a gap in access by distributing over-the-counter (OTC) EC to students on college campuses. Providing OTC medication to others, including EC, is not a criminal activity and bears minimal risk of civil liability. Students can reduce the potential of legal liability by:

- Not giving medical advice
- Taking reasonable product safety measures, such as checking for product tampering and expiration dates
- Maintaining confidentiality

Peer-to-peer student distribution networks are not likely subject to HIPAA because of the way their activities are structured.

How does peer-to-peer distribution of EC on campus work?

Emergency contraception is a way to prevent pregnancy that can be used after unprotected sex. Many types of EC are available in the US without a prescription or minimum age requirement. Peer-to-peer networks fill a gap in access by distributing over-the-counter (OTC) EC to students on college campuses. They are run by students, for the benefit of other students. Payment models vary, such as using vending machines or having students themselves distribute the product.

Can students involved in peer-to-peer EC distribution face liability for their activities?

Providing OTC medication to others, including EC, is not a criminal activity. In addition, students who distribute EC have minimal risk of civil liability, and can take steps to further minimize their liability. They are unlikely to face claims related to distribution of medication such as product liability. They could potentially face claims such as negligence, invasion of privacy, or emotional distress, although the risk of liability for such claims is small.

What steps can students take to reduce the potential of legal liability?

Students who participate in peer-to-peer EC distribution networks play an important role in limiting legal liability. They can reduce potential liability in the following ways:

- **Do not give medical advice:** Some professionals, such as doctors and pharmacists, are licensed to provide medical advice. These special roles may carry a duty to provide accurate advice and liability if that advice results in harm. Students who distribute EC are not licensed to provide medical advice and should avoid doing so. If they pass on information about how to take EC, they should be clear this is not medical advice and recommend the receiving student consult a medical professional with further questions.

- **Take reasonable safety measures:** Everyone has a duty to act reasonably in their interactions with others. Reasonable actions in the peer-to-peer distribution of EC may include such precautions as storing medication in a safe place and in accordance with the manufacturer's instructions, checking the product for tampering, keeping it in its original packaging, and checking the expiration date before distribution, among other things.
- **Maintain confidentiality:** Confidential information may include, e.g., the identity of who is receiving EC, or a recipient's address or contact information. It is important to limit the disclosure of confidential information to only individuals who need to have it.

Is peer-to-peer distribution of EC subject to HIPAA regulations?

Peer-to-peer student distribution networks are not likely subject to the federal Health Insurance Portability and Accountability Act (HIPAA) because of the way their activities are structured. HIPAA only applies to entities that engage in certain types of transactions related to receiving and paying for medical care, which do not include the type of distribution and payment structures adopted by the peer-to-peer EC networks discussed herein.



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