

LC003347

IN GENERAL ASSEMBLY

RELATING TO HEALTH AND SAFETY -- MEDICAL ETHICS DEFENSE ACT

Referred To: Senate Judiciary

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

MEDICAL ETHICS DEFENSE ACT

This chapter shall be known and may be cited as the "Medical Ethics Defense Act".

As used in this chapter:

(1) "Conscience" means the ethical, moral, or religious belief or principles held by any medical practitioner, healthcare institution, or healthcare payer. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity or body's governing documents, including, but not limited to, any published ethical, moral or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

15 (2) "Disclosure" means a formal or informal communication or transmission, but does not
16 include a communication or transmission concerning policy decisions that lawfully exercise
17 discretionary authority unless the medical practitioner providing the disclosure or transmission
18 reasonably believes that the disclosure or transmission evinces:

19 (i) Any violation of any law, rule, or regulation;

1 (ii) Any violation of any ethical guidelines for the provision of any medical procedure or
2 service; or

3 (iii) Gross mismanagement, a gross waste of funds, an abuse of authority, practices or
4 methods of treatment that may put patient health at risk, or a substantial and specific danger to
5 public health or safety.

6 (3) "Discrimination" means any adverse action taken against, or any threat of adverse
7 action communicated to, any medical practitioner, healthcare institution, or healthcare payer as a
8 result of their decision to decline to participate in a medical procedure or service on the basis of
9 conscience. Discrimination includes, but is not limited to, termination of employment; transfer from
10 current position; demotion from current position; adverse administrative action; reassignment to a
11 different shift or job title; increased administrative duties; refusal of staff privileges; refusal of
12 board certification; loss of career specialty; reduction of wages, benefits or privileges; refusal to
13 award a grant, contract or other program; refusal to provide residency training opportunities; denial,
14 deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and
15 other assistance; impediments to creating any healthcare institution or payer or expanding or
16 improving said healthcare institution or payer; impediments to acquiring, associating with, or
17 merging with any other healthcare institution or payer; the threat thereof with regard to any of the
18 preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened.
19 Discrimination excludes the negotiation or purchase of insurance by a non-government entity.

20 (4) "Healthcare institution" means any organization, corporation, partnership, association,
21 agency, network, sole proprietorship, joint venture, or other entity that provides medical procedures
22 or services. The term includes, but is not limited to, any public or private hospital, clinic, medical
23 center, physician organization, professional association, ambulatory surgical center, private
24 physician's office, pharmacy, nursing home, medical school, nursing school, medical training
25 facility, or any other entity or location in which medical procedures or services are performed.

26 (5) "Healthcare payer" means any employer, health plan, health maintenance organization,
27 insurance company, management services organization, or any other entity that pays for or arranges
28 for the payment of any medical procedure or service provided to any patient, whether that payment
29 is made in whole or in part.

30 (6) "Medical practitioner" means any person or individual who may be or is asked to
31 participate in any way in any medical procedure or service. This includes, but is not limited to,
32 doctors, nurse practitioners, physician's assistants, nurses, nurses' aides, allied health professionals,
33 medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists,
34 pharmacy technicians and employees, medical school faculty and students, nursing school faculty

1 and students, psychology and counseling faculty and students, medical researchers, laboratory
2 technicians, psychologists, psychiatrists, counselors, mental health professionals, social workers,
3 or any other person who facilitates or participates in the provision of a medical procedure or service.

4 (7) "Medical procedure or service" means medical care provided to any patient at any time
5 over the entire course of treatment, or medical research. This includes, but is not limited to, testing;
6 diagnosis; referral; dispensing and/or administering any drug, medication, or device; psychological
7 therapy or counseling; research; prognosis; therapy; record making procedures; notes related to
8 treatment; set up or performance of a surgery or procedure; or any other care or services performed
9 or provided by any medical practitioner including, but not limited to, physicians, nurses, allied
10 health professionals, paraprofessionals, contractors, or employees of healthcare institutions.

11 (8) "Participate" in a medical procedure or service means to provide, perform, assist with,
12 facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing,
13 or take part in any way in providing any medical procedure or service, or any form of such service.

14 (9) "Pay" or "payment" means to pay for, contract for, arrange for the payment of, whether
15 in whole or in part, reimburse or remunerate.

16 **23-106-3. Rights of conscience of medical practitioners, healthcare institutions and**
17 **healthcare payers.**

18 (a) Freedom of conscience. A medical practitioner, healthcare institution, or healthcare
19 payer has the right not to participate in or pay for any medical procedure or service which violates
20 their conscience.

21 (b) Limitations. The exercise of the right of conscience is limited to conscience-based
22 objections to a particular medical procedure or service. This section shall not be construed to waive
23 or modify any duty a health care practitioner, health care institution, or health care payer may have
24 to provide other medical procedures or services that do not violate the practitioner's, institution's
25 or payer's conscience.

26 (c) Immunity from liability. No medical practitioner, healthcare institution, or healthcare
27 payer shall be civilly, criminally, or administratively liable for exercising their right of conscience
28 not to participate in or pay for a medical procedure or service. No healthcare institution shall be
29 civilly, criminally, or administratively liable for the exercise of conscience rights not to participate
30 in a medical procedure or service by a medical practitioner employed, contracted, or granted
31 admitting privileges by the healthcare institution.

32 (d) Discrimination. No medical practitioner, healthcare institution, or healthcare payer
33 shall be discriminated against in any manner as a result of their decision to decline to participate in
34 or pay for a medical procedure or service on the basis of conscience.

1 (e) Exception. Notwithstanding any other provision of this chapter to the contrary, a
2 religious medical practitioner, healthcare institution, or healthcare payer that holds itself out to the
3 public as religious, states in its governing documents that it has a religious purpose or mission, and
4 has internal operating policies or procedures that implement its religious beliefs, shall have the right
5 to make employment, staffing, contracting, and admitting privilege decisions consistent with its
6 religious beliefs.

7 (f) Opt-in required. A health care practitioner may not be scheduled for, assigned, or
8 requested to directly or indirectly perform, facilitate, refer for, or participate in an abortion unless
9 the practitioner first affirmatively consents in writing to perform, facilitate, refer for, or participate
10 in the abortion.

11 (g) Emergency medical treatments. This chapter shall not be construed to override the
12 requirement to provide emergency medical treatment to all patients as set forth in 42 U.S.C. §
13 1395dd.

14 **23-106-4. Whistleblower protection.**

15 (a) No medical practitioner shall be discriminated against in any manner because the
16 medical practitioner:

17 (1) Provided, caused to be provided, or is about to provide or cause to be provided to their
18 employer, the attorney general, department of health, any state agency charged with protecting
19 health care rights of conscience, the U.S. Department of Health and Human Services, Office of
20 Civil Rights, or any other federal agency charged with protecting health care rights of conscience
21 information relating to any violation of, or any act or omission the medical practitioner reasonably
22 believes to be a violation of, any provision of this chapter;

23 (2) Testified or is about to testify in a proceeding concerning such violation; or

24 (3) Assisted or participated, or is about to assist or participate, in such a proceeding.

25 (b) Unless the disclosure is specifically prohibited by law, no medical practitioner shall be
26 discriminated against in any manner because the medical practitioner disclosed any information
27 that the medical practitioner reasonably believes evinces:

28 (1) Any violation of any law, rule, or regulation;

29 (2) Any violation of any ethical guidelines for the provisions of any medical procedure or
30 service; or

31 (3) Gross mismanagement, a gross waste of funds, an abuse of authority, practices or
32 methods of treatment that may put patient health at risk, or a substantial and specific danger to
33 public health or safety.

34 (c) The board of medical licensure and discipline shall not reprimand, sanction, or revoke

1 or threaten to revoke a license, certificate, or registration of a health care practitioner for engaging
2 in speech or expressive activity protected under the first amendment of the U.S. Constitution, unless
3 the board demonstrates beyond a reasonable doubt that the practitioner's speech was the direct
4 cause of physical harm to a person with whom the health care practitioner had a practitioner-patient
5 relationship within the three (3) years immediately preceding the incident of physical harm.

6 (1) The board of medical licensure and discipline shall provide a medical practitioner with
7 any complaints it has received which may result in the revocation of the medical practitioner's
8 license, certification, or registration, within seven (7) days after receipt of the complaint.

9 (2) The board of medical licensure and discipline shall pay the medical practitioner an
10 administrative penalty of five hundred dollars (\$500) for each day the complaint is not provided to
11 the medical practitioner after the seven (7) day period set forth in subsection (c)(1) of this section.

12 **23-106-5. Civil remedies.**

13 (a) Civil action for violation of right of conscience. A civil action for damages or injunctive
14 relief, or both, may be brought by any medical practitioner, healthcare institution, or healthcare
15 payer for any violation of this chapter. Any additional burden or expense on another medical
16 practitioner, healthcare institution, or healthcare payer arising from the exercise of the right of
17 conscience shall not be a defense to any violation of this chapter. However, no civil action may be
18 brought against an individual who declines to use or purchase medical procedure or services from
19 a specific medical practitioner, healthcare institution, or healthcare payer for exercising the rights
20 set forth in § 23-106-3.

21 (b) Other remedies. Any party aggrieved by any violation of this chapter may commence a
22 civil action and upon a finding of a violation, shall be entitled to recover threefold their actual
23 damages sustained, along with the costs of the action and reasonable attorneys' fees. Such damages
24 shall be cumulative and in no way limited by any other remedies which may be available under any
25 other federal, state, or municipal law. A court considering such civil action may also award
26 injunction relief, which may include, but is not limited to, reinstatement of a medical practitioner
27 to their previous position, reinstatement of board certification, and re-licensure of a healthcare
28 institution or healthcare payer.

29 **23-106-6. Severability.**

30 Any provision of this chapter held to be invalid or unenforceable by its terms, or as applied
31 to any person or circumstance, shall be construed so as to give it the maximum effect permitted by
32 law, unless such holding shall be one of utter invalidity or unenforceability, in which event such
33 provision shall be deemed severable herefrom and shall not affect the remainder hereof or the
34 application of such provision to other persons not similarly situated or to other, dissimilar

1 [circumstances.](#)

2 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- MEDICAL ETHICS DEFENSE ACT

1 This act would establish the right of a medical practitioner, healthcare institution, or
2 healthcare payer not to participate in or pay for any medical procedure or service that violates their
3 conscience. This act would further protect medical practitioners and institutions from lawsuits or
4 criminal charges for exercising their right of conscience. This act would ensure that a doctor or
5 nurse cannot be fired, demoted, or otherwise discriminated against by their employer for declining
6 to participate in a procedure that violates his or her conscience.

7 This act would take effect upon passage.

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