

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 308

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE MEDICAL ETHICS DEFENSE ACT; AMENDING TITLE 54, IDAHO CODE,
2 BY THE ADDITION OF A NEW CHAPTER 13, TITLE 54, IDAHO CODE, TO PROVIDE
3 A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE
4 TERMS, TO PROVIDE FOR RIGHTS OF CONSCIENCE OF MEDICAL PRACTITION-
5 ERS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS, TO PROVIDE FOR
6 WHISTLEBLOWER PROTECTION, TO PROVIDE FOR CIVIL REMEDIES, AND TO PRO-
7 VIDE SEVERABILITY; REPEALING SECTION 18-611, IDAHO CODE, RELATING TO
8 FREEDOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS; AND DECLARING AN
9 EMERGENCY.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 13, Title 54, Idaho Code, and to read as follows:

15 CHAPTER 13
16 MEDICAL ETHICS DEFENSE ACT

17 54-1301. SHORT TITLE. This act shall be known and may be cited as the
18 "Medical Ethics Defense Act."

19 54-1302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds
20 that the right of conscience is a fundamental and inalienable right. It was
21 central to the founding of the United States, has been deeply rooted in our
22 nation's history and tradition for centuries, and has been central to the
23 practice of medicine, through the Hippocratic oath, for millennia.

24 (2) Despite its preeminent importance, however, threats to the right of
25 conscience of medical practitioners, health care institutions, and health
26 care payers have become increasingly common and severe in recent years. The
27 swift pace of scientific advancement and the expansion of medical capabili-
28 ties, along with the mistaken notion that medical practitioners, health care
29 institutions, and health care payers are mere public utilities, promise to
30 only make the current crisis worse unless something is done to restore con-
31 science to its rightful place.

32 (3) With this purpose in mind, the legislature declares that it is the
33 public policy of the state of Idaho to protect the right of conscience for
34 medical practitioners, health care institutions, and health care payers.

35 (4) As the right of conscience is fundamental, no medical practitioner,
36 health care institution, or health care payer should be compelled to partic-
37 ipate in or pay for any medical procedure or prescribe or pay for any medica-
38 tion to which such practitioner, institution, or payer objects on the basis
39 of conscience, whether such conscience is informed by religious, moral, or
40 ethical beliefs or principles.

1 (5) It is the purpose of this chapter to protect medical practitioners,
2 health care institutions, and health care payers from discrimination, pun-
3 ishment, or retaliation as a result of any instance of conscientious medical
4 objection.

5 54-1303. DEFINITIONS. For the purpose of this chapter:

6 (1) "Conscience" means the ethical, moral, or religious beliefs or
7 principles held by any medical practitioner, health care institution, or
8 health care payer. Conscience with respect to institutional entities or
9 corporate bodies, as opposed to individual persons, is determined by ref-
10 erence to that entity's or body's governing documents, including but not
11 limited to any published ethical, moral, or religious guidelines or di-
12 rectives, mission statements, constitutions, articles of incorporation,
13 bylaws, policies, or regulations.

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

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

20 (b) Any violation of any ethical guidelines for the provision of any
21 medical procedure or service; or

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

25 (3) "Discrimination" means any adverse action taken against, or any
26 threat of adverse action communicated to, any medical practitioner, health
27 care institution, or health care payer as a result of the practitioner's,
28 institution's, or payer's decision to decline to participate in a medical
29 procedure or service on the basis of conscience. Discrimination includes
30 but is not limited to: termination of employment; transfer from current
31 position; demotion from current position; adverse administrative action;
32 reassignment to a different shift or job title; increased administrative
33 duties; refusal of staff privileges; refusal of board certification; loss
34 of career specialty; reduction of wages, benefits, or privileges; refusal
35 to award a grant, contract, or other program; refusal to provide residency
36 training opportunities; denial, deprivation, or disqualification of licen-
37 sure; withholding or disqualifying from financial aid or other assistance;
38 impediments to creating any health care institution or payer or expanding
39 or improving said health care institution or payer; impediments to acquir-
40 ing, associating with, or merging with any other health care institution
41 or payer; the threat thereof with regard to any of the actions described in
42 this subsection; or any other penalty or disciplinary or retaliatory action,
43 whether executed or threatened. However, discrimination excludes the nego-
44 tiation or purchase of insurance by a nongovernmental entity.

45 (4) "Medical procedure or service" means medical care provided to any
46 patient at any time over the entire course of treatment or medical research.
47 This includes but is not limited to: testing; diagnosis; referral; dispens-
48 ing or administering any drug, medication, or device; psychological ther-
49 apy or counseling; research; prognosis; therapy; record-making procedures;

1 notes related to treatment; set up or performance of a surgery or procedure;
2 or any other care or services performed or provided by any medical practi-
3 tioner, including but not limited to physicians, nurses, allied health pro-
4 fessionals, paraprofessionals, contractors, or employees of health care in-
5 stitutions.

6 (5) "Health care institution" means any organization, corporation,
7 partnership, association, agency, network, sole proprietorship, joint ven-
8 ture, or other entity that provides medical procedures or services. The term
9 includes but is not limited to any public or private hospital, clinic, medi-
10 cal center, physician organization, professional association, ambulatory
11 surgical center, private physician's office, pharmacy, nursing home, medi-
12 cal school, nursing school, medical training facility, or any other entity
13 or location in which medical procedures or services are performed.

14 (6) "Health care payer" means any employer, health plan, health main-
15 tenance organization, insurance company, management services organization,
16 or any other entity that pays for, or arranges for the payment of, any medical
17 procedure or service provided to any patient, whether that payment is made in
18 whole or in part.

19 (7) "Licensing authority" means any agency, bureau, commission, de-
20 partment, division, or professional or occupational licensing board charged
21 with granting, suspending, or revoking the license, certificate, registra-
22 tion, permit, or other authorization of any person to practice a profession
23 or occupation, including but not limited to the professional and occupa-
24 tional licensing boards within the department of self-governing agencies.

25 (8) "Medical practitioner" means any person or individual who may be
26 or is asked to participate in any way in any medical procedure or service.
27 This includes but is not limited to: doctors, nurse practitioners, physi-
28 cian's assistants, nurses, nurses' aides, allied health professionals, medi-
29 cal assistants, hospital employees, clinic employees, nursing home employ-
30 ees, pharmacists, pharmacy technicians and employees, medical school fac-
31 ulty and students, nursing school faculty and students, psychology and coun-
32 seling faculty and students, medical researchers, laboratory technicians,
33 psychologists, psychiatrists, counselors, mental health professionals, so-
34 cial workers, or any other person who facilitates or participates in the pro-
35 vision of a medical procedure or service.

36 (9) "Participate in a medical procedure or service" means to provide,
37 perform, assist with, facilitate, refer for, counsel for, advise with regard
38 to, admit for the purposes of providing, or take part in any way in providing
39 any medical procedure or service, or any form of such service.

40 (10) "Pay" or "payment" means to pay for, contract for, arrange for the
41 whole or partial payment of, reimburse, or remunerate costs.

42 54-1304. RIGHTS OF CONSCIENCE OF MEDICAL PRACTITIONERS, HEALTH CARE
43 INSTITUTIONS, AND HEALTH CARE PAYERS. (1) A medical practitioner, health
44 care institution, or health care payer has the right not to participate in or
45 pay for any medical procedure or service that violates the practitioner's,
46 institution's, or payer's conscience.

47 (2) The exercise of the right of conscience is limited to conscience-
48 based objections to a particular medical procedure or service. This sec-
49 tion may not be construed to waive or modify any duty a medical practitioner,

1 health care institution, or health care payer may have to provide other med-
2 ical procedures or services that do not violate the practitioner's, institu-
3 tion's, or payer's conscience.

4 (3) No medical practitioner, health care institution, or health care
5 payer shall be civilly, criminally, or administratively liable for exercis-
6 ing the practitioner's, institution's, or payer's right of conscience not to
7 participate in or pay for a medical procedure or service. No health care in-
8 stitution shall be civilly, criminally, or administratively liable for the
9 exercise of conscience rights not to participate in a medical procedure or
10 service by a medical practitioner employed, contracted, or granted admit-
11 ting privileges by the health care institution.

12 (4) No medical practitioner, health care institution, or health care
13 payer shall be discriminated against in any manner as a result of the practi-
14 tioner's, institution's, or payer's decision to decline to participate in or
15 pay for a medical procedure or service on the basis of conscience.

16 (5) Notwithstanding any other provision of this chapter to the con-
17 trary, a religious medical practitioner, health care institution, or health
18 care payer that holds itself out to the public as religious, states in its
19 governing documents that it has a religious purpose or mission, and has
20 internal operating policies or procedures that implement its religious be-
21 liefs shall have the right to make employment, staffing, contracting, and
22 admitting privilege decisions consistent with its religious beliefs.

23 (6) A medical practitioner may not be scheduled for, assigned, or re-
24 quested to directly or indirectly perform, facilitate, refer for, or partic-
25 ipate in an abortion unless the practitioner first affirmatively consents in
26 writing to perform, facilitate, refer for, or participate in the abortion.

27 (7) In cases where a living will or physician's orders for scope of
28 treatment is operative, as defined by the medical consent and natural death
29 act, and a physician has a conscience objection to the treatment desired
30 by the patient, the physician shall comply with the provisions of section
31 39-4513(2), Idaho Code, before withdrawing care and treatment to the pa-
32 tient.

33 (8) Nothing in this section shall affect the rights of conscience pro-
34 vided for in section 18-612, Idaho Code, to the extent that those rights are
35 broader in scope than those provided for in this section.

36 (9) Nothing in this section shall be construed to override the require-
37 ment to provide emergency medical treatment to all patients as set forth in
38 42 U.S.C. 1395dd.

39 54-1305. WHISTLEBLOWER PROTECTION. (1) No medical practitioner shall
40 be discriminated against in any manner because the medical practitioner:

41 (a) Provided, caused to be provided, or is about to provide or cause
42 to be provided to the practitioner's employer, the attorney general of
43 Idaho, any state agency charged with protecting health care rights of
44 conscience, the United States department of health and human services
45 office of civil rights, or any other federal agency charged with pro-
46 tecting health care rights of conscience information relating to any
47 violation of, or any act or omission the medical practitioner reason-
48 ably believes to be a violation of, any provision of this chapter;

1 (b) Testified or is about to testify in a proceeding concerning such vi-
2 olation; or

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

5 (2) Unless the disclosure is specifically prohibited by law, no medical
6 practitioner shall be discriminated against in any manner because the med-
7 ical practitioner disclosed any information that the medical practitioner
8 reasonably believes evinces:

9 (a) Any violation of any law, rule, or regulation;

10 (b) Any violation of any ethical guidelines for the provision of any
11 medical procedure or service; or

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

15 (3) A licensing authority, a certifying board, or the department of
16 health and welfare may not reprimand, sanction, or revoke or threaten to
17 revoke a license, certificate, or registration of a medical practitioner
18 for engaging in speech or expressive activity protected under the first
19 amendment to the United States constitution, unless the board demonstrates
20 beyond a reasonable doubt that the practitioner's speech was the direct
21 cause of physical harm to a person with whom the medical practitioner had a
22 practitioner-patient relationship within the three (3) years immediately
23 preceding the incident of physical harm.

24 (a) The licensing authority or certifying board must provide a medical
25 practitioner with any complaint it has received that may result in the
26 revocation of the medical practitioner's license, certification, or
27 registration within fourteen (14) days after receipt of the complaint.

28 (b) The licensing authority or certifying board must pay the medical
29 practitioner an administrative penalty of five hundred dollars (\$500)
30 for each day the complaint is not provided to the medical practitioner
31 after the specified fourteen (14) days.

32 54-1306. CIVIL REMEDIES. (1) A civil action for damages or injunctive
33 relief, or both, may be brought by any medical practitioner, health care in-
34 stitution, or health care payer for any violation of any provision of this
35 chapter. Any additional burden or expense on another medical practitioner,
36 health care institution, or health care payer arising from the exercise of
37 the right of conscience shall not be a defense to any violation of this chap-
38 ter. However, no civil action may be brought against an individual who de-
39 clines to use or purchase a medical procedure or services from a specific
40 medical practitioner, health care institution, or health care payer for ex-
41 exercising the rights granted in section 54-1304(1), Idaho Code.

42 (2) Any party aggrieved by any violation of this chapter may commence a
43 civil action and shall be entitled, upon the finding of a violation, to re-
44 cover three (3) times the practitioner's, institution's, or payer's actual
45 damages sustained or twenty-five thousand dollars (\$25,000), whichever is
46 more, along with the costs of the action and reasonable attorney's fees.
47 Such damages shall be cumulative and in no way limited by any other remedies
48 that may be available under any other federal, state, or municipal law. A
49 court considering such civil action may also award injunctive relief, in-

1 cluding but not limited to reinstatement of a medical practitioner to the
2 practitioner's previous position, reinstatement of board certification,
3 and relicensure of a health care institution or health care payer.

4 54-1307. SEVERABILITY. The provisions of this chapter are hereby de-
5 clared to be severable and if any provision of this chapter or the applica-
6 tion of such provision to any person or circumstance is declared invalid for
7 any reason, such declaration shall not affect the validity of the remaining
8 portions of this chapter.

9 SECTION 2. That Section [18-611](#), Idaho Code, be, and the same is hereby
10 repealed.

11 SECTION 3. An emergency existing therefor, which emergency is hereby
12 declared to exist, this act shall be in full force and effect on and after its
13 passage and approval.