

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 672

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 HEALTH CARE PROFESSION-
5 ALS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS, TO PROVIDE FOR
6 WHISTLEBLOWER PROTECTION, TO PROVIDE FOR CIVIL REMEDIES, AND TO PROVIDE
7 SEVERABILITY; REPEALING SECTION 18-611, IDAHO CODE, RELATING TO FREE-
8 DOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS; AND DECLARING AN EMER-
9 GENCY.
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
25 of conscience of health care professionals, health care institutions,
26 and health care payers have become increasingly common and severe in re-
27 cent years. The swift pace of scientific advancement and the expansion of
28 medical capabilities, along with the mistaken notion that health care pro-
29 fessionals, health care institutions, and health care payers are mere public
30 utilities, promise to only make the current crisis worse unless something is
31 done to restore conscience 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 health care professionals, health care institutions, and health care pay-
35 ers.

36 (4) As the right of conscience is fundamental, no health care profes-
37 sional, health care institution, or health care payer should be compelled
38 to participate in or pay for any medical procedure or prescribe or pay for
39 any medication to which such professional, institution, or payer objects on

1 the basis of conscience, whether such conscience is informed by religious,
2 moral, or ethical beliefs or principles.

3 (5) It is the purpose of this chapter to protect health care profession-
4 als, health care institutions, and health care payers from discrimination,
5 punishment, or retaliation as a result of any instance of conscientious med-
6 ical objection.

7 54-1303. DEFINITIONS. For the purpose of this chapter:

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

16 (2) "Disclosure" means a formal or informal communication or transmis-
17 sion but does not include a communication or transmission concerning policy
18 decisions that lawfully exercise discretionary authority unless the health
19 care professional providing the disclosure or transmission reasonably be-
20 lieves that the disclosure or transmission evinces:

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

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

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

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

47 (4) "Medical procedure or service" means medical care provided to any
48 patient at any time over the entire course of treatment or medical research.
49 This includes but is not limited to: testing; diagnosis; referral; dispens-

1 ing or administering any drug, medication, or device; psychological ther-
2 apy or counseling; research; prognosis; therapy; record-making procedures;
3 notes related to treatment; set up or performance of a surgery or procedure;
4 or any other care or services performed or provided by any health care pro-
5 fessional.

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) "Health care professional" or "professional" means any person li-
20 censed under title 54, Idaho Code, certified, or registered by the state of
21 Idaho to deliver health care.

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

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

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

34 54-1304. RIGHTS OF CONSCIENCE OF HEALTH CARE PROFESSIONALS, HEALTH
35 CARE INSTITUTIONS, AND HEALTH CARE PAYERS. (1) A health care professional,
36 health care institution, or health care payer has the right not to par-
37 ticipate in or pay for any medical procedure or service that violates the
38 professional's, institution's, or payer's conscience.

39 (2) The exercise of the right of conscience is limited to conscience-
40 based objections to a particular medical procedure or service. This section
41 may not be construed to waive or modify any duty a health care professional,
42 health care institution, or health care payer may have to provide other med-
43 ical procedures or services that do not violate the professional's, institu-
44 tion's, or payer's conscience.

45 (3) No health care professional, health care institution, or health
46 care payer shall be civilly, criminally, or administratively liable for ex-
47 exercising the professional's, institution's, or payer's right of conscience
48 not to participate in or pay for a medical procedure or service. No health
49 care institution shall be civilly, criminally, or administratively liable

1 for the exercise of conscience rights not to participate in a medical pro-
2 cedure or service by a health care professional employed, contracted, or
3 granted admitting privileges by the health care institution.

4 (4) No health care professional, health care institution, or health
5 care payer shall be discriminated against in any manner as a result of the
6 professional's, institution's, or payer's decision to decline to partici-
7 pate in or pay for a medical procedure or service on the basis of conscience.

8 (5) Notwithstanding any other provision of this chapter to the con-
9 trary, a religious health care professional, health care institution, or
10 health care payer that holds itself out to the public as religious, states
11 in its governing documents that it has a religious purpose or mission, and
12 has internal operating policies or procedures that implement its religious
13 beliefs shall have the right to make employment, staffing, contracting, and
14 admitting privilege decisions consistent with its religious beliefs.

15 (6) In cases where a living will or physician's orders for scope of
16 treatment is operative, as defined by the medical consent and natural death
17 act, and a physician has a conscience objection to the treatment desired
18 by the patient, the physician shall comply with the provisions of section
19 39-4513(2), Idaho Code, before withdrawing care and treatment to the pa-
20 tient.

21 (7) If a health care professional invokes a conscience objection in a
22 life-threatening situation where no other health care professional capable
23 of treating the emergency is available, such health care professional shall
24 provide treatment and care until an alternate health care professional capa-
25 ble of treating the emergency is found.

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

29 (9) Nothing in this section shall be construed to override the require-
30 ment to provide emergency medical treatment to all patients as set forth in
31 42 U.S.C. 1395dd.

32 54-1305. WHISTLEBLOWER PROTECTION. (1) No health care professional
33 shall be discriminated against in any manner because the health care profes-
34 sional:

35 (a) Provided, caused to be provided, or is about to provide or cause
36 to be provided to the professional's employer, the attorney general of
37 Idaho, any state agency charged with protecting health care rights of
38 conscience, the United States department of health and human services
39 office of civil rights, or any other federal agency charged with pro-
40 tecting health care rights of conscience information relating to any
41 violation of, or any act or omission the health care professional rea-
42 sonably believes to be a violation of, any provision of this chapter;

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

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

47 (2) Unless the disclosure is specifically prohibited by law, no health
48 care professional shall be discriminated against in any manner because the

1 health care professional disclosed any information that the health care pro-
2 fessional reasonably believes evinces:

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

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

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

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

18 (a) The licensing authority or certifying board must provide a health
19 care professional with any complaint it has received that may result
20 in the revocation of the health care professional's license, certifi-
21 cation, or registration within fourteen (14) days after receipt of the
22 complaint.

23 (b) The licensing authority or certifying board must pay the health
24 care professional an administrative penalty of five hundred dollars
25 (\$500) for each week the complaint is not provided to the health care
26 professional after the specified fourteen (14) days.

27 54-1306. CIVIL REMEDIES. (1) A cause of action for damages or injunc-
28 tive relief, or both, may be brought by any health care professional, health
29 care institution, or health care payer for any violation of any provision of
30 this chapter. Any additional burden or expense on another health care pro-
31 fessional, health care institution, or health care payer arising from the
32 exercise of the right of conscience shall not be a defense to any violation
33 of this chapter. However, no cause of action may be brought against an indi-
34 vidual who declines to use or purchase a medical procedure or services from a
35 specific health care professional, health care institution, or health care
36 payer for exercising the rights granted in section 54-1304(1), Idaho Code.

37 (2) Any party aggrieved by any violation of this chapter may commence a
38 civil action and shall be entitled, upon the finding of a violation, to:

39 (a) Injunctive relief, when appropriate, including but not limited to
40 reinstatement of a health care professional's previous position, rein-
41 statement of board certification, and relicensure of a health care in-
42 stitution or health care payer;

43 (b) Actual damages for injuries suffered; and

44 (c) Reasonable costs and attorney fees.

45 (3) Such damages shall be cumulative and in no way limited by any other
46 remedies that may be available under any other federal, state, or municipal
47 law.

1 54-1307. SEVERABILITY. The provisions of this chapter are hereby de-
2 clared to be severable and if any provision of this chapter or the applica-
3 tion of such provision to any person or circumstance is declared invalid for
4 any reason, such declaration shall not affect the validity of the remaining
5 portions of this chapter.

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

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