

1 AN ACT relating to the recruitment and retention of medical professionals and
2 declaring an emergency.

3 WHEREAS, Kentucky has a statewide hospital workforce vacancy rate of 17.1
4 percent; and

5 WHEREAS, nine out of ten members of faith-based medical organizations would
6 rather stop practicing medicine than be forced to violate their conscience; and

7 WHEREAS, it is common for doctors, medical students, and other health care
8 professionals to face discrimination for declining to participate in activities or provide
9 medical procedures to which they have moral or religious objections; and

10 WHEREAS, forcing doctors, nurses, and other health care professionals to violate
11 their conscience could exacerbate and lead to additional increases in shortages, depriving
12 Kentucky patients of critical care; and

13 WHEREAS, the neighboring state of Illinois has provided comprehensive
14 protections for rights of conscience in the practice of medicine since 1977, and the
15 neighboring state of Ohio has provided comprehensive protections for rights of
16 conscience in the practice of medicine since 2021; and

17 WHEREAS, Kentucky law does not currently provide a legal remedy for health
18 care professionals who are forced to violate their conscience; and

19 WHEREAS, Kentucky patients benefit from conscience-informed medical care;
20 and

21 WHEREAS, Section 5 of the Constitution of Kentucky requires that "No human
22 authority shall, in any case whatever, control or interfere with the rights of conscience.";
23 and

24 WHEREAS, conscience-driven health care professionals care for all patients even
25 when they cannot according to their conscience provide particular medical procedures;
26 and

27 WHEREAS, the federal Emergency Medical Treatment and Active Labor Act

1 requires treatment for emergency medical conditions, and only nonemergency medical
2 services can be declined for reasons of conscience;

3 NOW, THEREFORE,

4 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

5 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
6 READ AS FOLLOWS:

7 *Nothing in Sections 1 to 6 of this Act shall be construed to override the requirement to:*

8 *(1) Provide emergency medical treatment to all patients as set forth in 42 U.S.C. sec.*
9 *1395dd or any other federal law governing emergency medical treatment; and*

10 *(2) Conduct examinations and collect evidence set forth in federal law governing*
11 *sexual assault crimes.*

12 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
13 READ AS FOLLOWS:

14 *As used in Sections 1 to 6 of this Act:*

15 *(1) "Conscience" means the sincerely held religious, moral, or ethical principles*
16 *held by a medical practitioner, a health care institution, or a health care payer.*

17 *For purposes of Sections 1 to 6 of this Act, a health care institution or health care*
18 *payer's conscience shall be determined by reference to its existing or proposed*
19 *governing documents, including religious, moral, or ethical guidelines, mission*
20 *statement, constitution, bylaws, articles of incorporation, policies, regulations, or*
21 *other relevant documents;*

22 *(2) "Disclosure" means a formal or informal communication or transmission, but*
23 *does not include a communication or transmission concerning policy decisions*
24 *that lawfully exercise discretionary authority, unless the medical practitioner*
25 *providing the communication or transmission reasonably believes that the*
26 *communication or transmission evinces:*

27 *(a) A violation of any law, rule, or regulation;*

- 1 (b) A violation of any standard of care or other ethical guidelines for the
2 provision of any health care service; or
- 3 (c) Gross mismanagement, a gross waste of funds, an abuse of authority,
4 practices or methods of treatment that may put patient health at risk, or a
5 substantial and specific danger to public health or safety;
- 6 (3) "Discrimination" means any adverse action taken against, or any threat of
7 adverse action communicated to, a medical practitioner, health care institution,
8 or health care payer as a result of his, her, or its decision to decline to participate
9 in a health care service on the basis of conscience. "Discrimination" includes but
10 is not limited to:
- 11 (a) Termination of employment;
- 12 (b) Transfer or demotion from current position;
- 13 (c) Adverse administrative action;
- 14 (d) Reassignment to a different shift or job title;
- 15 (e) Refusal of staff privileges;
- 16 (f) Refusal of board certification;
- 17 (g) Loss of career specialty;
- 18 (h) Reduction of wages, benefits, or privileges;
- 19 (i) Refusal to award a grant, contract, or other program;
- 20 (j) Refusal to provide residency training opportunities;
- 21 (k) Denial, deprivation, or disqualification of licensure;
- 22 (l) Withholding or disqualifying from financial aid and other assistance;
- 23 (m) Reducing, excluding, terminating, materially altering the terms of
24 conditions of, or otherwise making unavailable or denying, any grant,
25 contract, subcontract, cooperative agreement, guarantee, loan, or other
26 similar program or benefit;
- 27 (n) Impediments to creating any health care institution or payer or expanding

- 1 or improving that health care institution or payer;
- 2 (o) Impediments to acquiring, associating with, or merging with any other
- 3 health care institution or payer;
- 4 (p) The threat with regard to any of the actions in paragraphs (a) to (o) of this
- 5 subsection; or
- 6 (q) Any other penalty, disciplinary, or retaliatory action, whether executed or
- 7 threatened;
- 8 (4) "Health care institution" means any public or private hospital, clinic, medical
- 9 center, professional association, ambulatory surgical center, private physician's
- 10 office, pharmacy, nursing home, medical school, nursing school, medical
- 11 training facility, or any other entity or location in which health care services are
- 12 performed on behalf of any person. "Health care institutions" includes but is not
- 13 limited to organizations, corporations, partnerships, associations, agencies,
- 14 networks, sole proprietorships, joint ventures, or any other entity that provides
- 15 health care services;
- 16 (5) "Health care payer" means any employer, health care plan, health maintenance
- 17 organization, insurance company, management services organization, or any
- 18 other entity that pays for or arranges for the payment of any health care service
- 19 provided to any patient, whether that payment is made in whole or in part;
- 20 (6) "Health care service" means medical care provided to any patient at any time
- 21 over the entire course of treatment or medical research, including but not limited
- 22 to:
- 23 (a) Testing;
- 24 (b) Diagnosis;
- 25 (c) Referral;
- 26 (d) Dispensing or administering any drug, medication, or device;
- 27 (e) Psychological therapy or counseling;

1 (f) Record making procedures;

2 (g) Notes related to treatments;

3 (h) Research;

4 (i) Prognosis;

5 (j) Therapy;

6 (k) Creating medical records; or

7 (l) Any other medical care or necessary medical services performed or provided
8 by any medical practitioner;

9 (7) "Medical practitioner" means any person or individual who may be or is asked to
10 participate in a health care service. "Medical practitioner" includes but is not
11 limited to doctors, nurses, practitioners, physician's assistants, nurses, nurse's
12 aides, allied health professionals, medical assistants, hospital employees, clinic
13 employees, nursing home employees, pharmacists, pharmacy technicians and
14 employees, medical school faculty and students, nursing faculty and students,
15 psychology and counseling faculty and students, medical researchers, laboratory
16 technicians, counselors, social workers, or any other person who facilitates or
17 participates in the provision of health care to any person;

18 (8) "Participate in a health care service" means to provide, perform, assist with,
19 facilitate, refer for, counsel for, consult with regard to, admit for the purposes of
20 providing, or take part in any way in providing, any health care service or any
21 form of such a service;

22 (9) "Pay" or "payment" means to reimburse, remunerate, pay for, contract for,
23 arrange for the payment of, whether in whole or in part; and

24 (10) "Regulated healthcare entity" means any medical practitioner, health care
25 institution, or health care payer that is certified, authorized, or licensed by the
26 Commonwealth of Kentucky, or that receives any form of state funding or state
27 insurance reimbursement.

1 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) A medical practitioner, health care institution, or health care payer shall have the
4 right to not participate in or pay for any health care service which violates his,
5 her, or its conscience. A health care payer shall not decline to pay for a medical
6 procedure or service it is contractually obligated to pay for under the terms of its
7 contract with an insured party.

8 (2) A medical practitioner, health care institution, or health care payer shall not be
9 liable civilly, criminally, or administratively for exercising his, her, or its right of
10 conscience with respect to a health care service.

11 (3) A medical practitioner, health care institution, or health care payer shall not be
12 subject to discrimination in any manner by the Commonwealth, any of its
13 political subdivisions, or any regulated health care entity as a result of his, her, or
14 its decision to decline to participate in a health care service on the basis of
15 conscience.

16 (4) The exercise of the right of conscience is limited to conscience-based objections
17 to a particular medical procedure or service. This section shall not be construed
18 to waive or modify any duty a health care practitioner, health care institution, or
19 health care payer may have to provide other medical procedures or services that
20 do not violate the practitioner's, institution's, or payer's conscience.

21 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) A medical practitioner shall not be discriminated against because he or she:

24 (a) Provided, caused to be provided, or is about to provide to his or her
25 employer, the Attorney General, any agency of the Commonwealth charged
26 with protecting health care rights of conscience, the United States
27 Department of Health and Human Services, Office for Civil Rights, or any

1 other federal agency charged with protecting health care rights of
 2 conscience with information relating to any violation, act, or omission the
 3 medical practitioner reasonably believes to be a violation of any provision of
 4 Sections 1 to 6 of this Act;

5 (b) Testified or is about to testify in a proceeding concerning a violation; or

6 (c) Assisted, participated, or is about to assist or participate in related
 7 proceedings.

8 (2) Unless the disclosure is prohibited by law, a medical practitioner shall not be
 9 discriminated against because he or she disclosed information that he or she
 10 reasonably believes evinces:

11 (a) A violation of a relevant law, rule, or regulation;

12 (b) A violation of a standard of care or other ethical guideline for the provision
 13 of health care services; or

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

17 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) The State Board of Medical Licensure may not reprimand, sanction, deny, revoke
 20 or threaten to revoke a license, certification, or registration of a medical
 21 practitioner for engaging in speech or expressive activity that is protected by the
 22 First Amendment to the United States Constitution, unless the board
 23 demonstrates beyond a reasonable doubt that the medical practitioner's speech
 24 was the direct cause of physical harm to a person with whom the practitioner had
 25 a practitioner-patient relationship within the three (3) years immediately
 26 preceding the incident of physical harm.

27 (2) The State Board of Medical Licensure shall provide a medical practitioner with

1 any complaints it has received which may result in the revocation of the medical
2 practitioner's license, certification, or registration within twenty-one (21) days
3 after receipt of the complaint. The board shall pay the medical practitioner an
4 administrative penalty of five hundred dollars (\$500) for each day the complaint
5 is not provided to the medical practitioner after the specified twenty-one (21) day
6 period.

7 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
8 READ AS FOLLOWS:

9 Any person injured by a violation of Sections 1 to 6 of this Act shall have a civil cause
10 of action in the Circuit Court of competent jurisdiction to enjoin further violations, to
11 recover the actual damages sustained, and to recover the costs of the lawsuit and to
12 provide any other appropriate relief, which may include reinstatement of a medical
13 practitioner to his or her previous position, reinstatement of board certification, and
14 relicensure of a health care institution or health care payer. If a violation is found to
15 have occurred, the court's order or judgment shall include a reasonable attorney's fee.
16 Any additional burden or expense on another medical practitioner, health care
17 institution, or health care payer arising from the exercise of the right of conscience
18 shall not be a defense to any violation of Sections 1 to 6 of this Act.

19 ➔Section 7. If any provision of this Act or the application thereof to any person
20 or circumstance is held invalid, the invalidity shall not affect other provisions or
21 applications of the Act that can be given effect without the invalid provision or
22 application, and to this end the provisions of this Act are severable.

23 ➔Section 8. This Act may be cited as the Healthcare Heroes Recruitment and
24 Retention Act.

25 ➔Section 9. Whereas it is crucial that the Commonwealth's regulatory policies
26 reflect the statutory intent of the General Assembly, an emergency is declared to exist,
27 and this Act takes effect upon its passage and approval by the Governor or upon its

1 otherwise becoming a law.