

1 AN ACT relating to protecting the exercise of medical ethics within the medical  
2 profession.

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

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

6 *As used in Sections 1 to 4 of this Act:*

7 *(1) "Conscience" means the religious, moral or ethical principles held by a medical*  
8 *practitioner, a health care institution, or a health care payer. For purposes of*  
9 *Sections 1 to 4 of this act, a health care institution or health care payer's*  
10 *conscience shall be determined by reference to its existing or proposed religious,*  
11 *moral or ethical guidelines, mission statement, constitution, bylaws, articles of*  
12 *incorporation, regulations or other relevant documents;*

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

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

19 *(b) A violation of any standard of care or other ethical guidelines for the*  
20 *provision of any health care service; or*

21 *(c) Gross mismanagement, a gross waste of funds, an abuse of authority, or a*  
22 *substantial and specific danger to public health or safety;*

23 *(3) "Discrimination" means any adverse action taken against, or any threat of*  
24 *adverse action communicated to, a medical practitioner, health care institution,*  
25 *or health care payer as a result of his, her, or its decision to decline to participate*  
26 *in a health care service on the basis of conscience. Discrimination includes but is*  
27 *not limited to termination of employment; transfer from current position;*

1 demotion from current position; adverse administrative action; reassignment to a  
2 different shift or job title; increased administrative duties; refusal of staff  
3 privileges; refusal of board certification; loss of career specialty; reduction of  
4 wages, benefits, or privileges; refusal to award a grant, contract, or other  
5 program; refusal to provide residency training opportunities; denial, deprivation,  
6 or disqualification of licensure; withholding or disqualifying from financial aid  
7 and other assistance; reducing, excluding, terminating, materially altering the  
8 terms of conditions of, or otherwise making unavailable or denying, any grant,  
9 contract, subcontract, cooperative agreement, guarantee, loan, or other similar  
10 program or benefit; impediments to creating any health care institution or payer  
11 or expanding or improving that health care institution or payer; impediments to  
12 acquiring, associating with, or merging with any other health care institution or  
13 payer; the threat thereof with regard to any of the preceding; or any other  
14 penalty, disciplinary, or retaliatory action, whether executed or threatened;

15 (4) "Health care service" means medical care provided to any patient at any time  
16 over the entire course of treatment. This includes but is not limited to initial  
17 examination; testing; diagnosis; referral; dispensing or administering any drug,  
18 medication, or device; psychological therapy or counseling; research; prognosis;  
19 therapy; any other care or necessary services performed or provided by any  
20 medical practitioner, including but not limited to allied health professionals,  
21 paraprofessionals, or employees of health care institutions;

22 (5) "Health care institution" means any public or private hospital, clinic, medical  
23 center, professional association, ambulatory surgical center, private physician's  
24 office, pharmacy, nursing home, medical school, nursing school, medical  
25 training facility, or any other entity or location in which health care services are  
26 performed on behalf of any person. Health care institutions may include but are  
27 not limited to organizations, corporations, partnerships, associations, agencies,

1 networks, sole proprietorships, joint ventures, or any other entity that provides  
2 health care services;

3 (6) "Health care payer" means any employer, health care plan, health maintenance  
4 organization, insurance company, management services organization, or any  
5 other entity that pays for or arranges for the payment of any health care service  
6 provided to any patient, whether that payment is made in whole or in part;

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

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

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

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

24 (1) A medical practitioner, health care institution, or health care payer shall have the  
25 right not to participate in or pay for any health care service which violates his,  
26 her, or its conscience.

27 (2) A medical practitioner, health care institution, or health care payer shall not be

1 liable civilly, criminally, or administratively for exercising his, her, or its right or  
 2 conscience with respect to a health care service.

3 (3) No medical practitioner, health care institution, or health care payer shall be  
 4 subject to discrimination in any manner as a result of his, her, or its decision to  
 5 decline to participate in a health care service on the basis of conscience.

6 (4) Nothing in Sections 1 to 4 of this Act shall be construed to override the  
 7 requirement to provide emergency medical treatment to all patients as set forth in  
 8 42 U.S.C. sec. 1395dd or any other federal law governing emergency medical  
 9 treatments.

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

12 (1) No medical practitioner shall be discriminated against because he or she:

13 (a) Provided, caused to be provided, or is about to provide to his or her  
 14 employer, the Attorney General, any agency of the Commonwealth charged  
 15 with protecting health care rights of conscience, the United States  
 16 Department of Health and Human Services, Office for Civil Rights, or any  
 17 other federal agency charged with protecting health care rights of  
 18 conscience with information relating to any violation, act, or omission the  
 19 medical practitioner reasonably believes to be a violation of any provision of  
 20 Sections 1 to 4 of this Act;

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

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

24 (2) Unless the disclosure is prohibited by law, no medical practitioner shall be  
 25 discriminated against because he or she disclosed information that he or she  
 26 reasonably believe evinces:

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

1       **(b) A violation of a standard of care or other ethical guideline for the provision**  
2               **of health care services; or**

3       **(c) Gross mismanagement, gross waste of funds, abuse of authority, or**  
4               **substantial and specific danger to public health or safety.**

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

7       **Any person injured by a violation of Sections 1 to 4 of this Act shall have a civil cause**  
8       **of action in the Circuit Court of appropriate jurisdiction to enjoin further violations, to**  
9       **recover the actual damages sustained, and to recover the costs of the lawsuit and to**  
10       **provide any other appropriate relief, which may include reinstatement of a medical**  
11       **practitioner to his or her previous position, reinstatement of board certification, and**  
12       **relicensure of a health care institution or health care payer. If a violation is found to**  
13       **have occurred, the court's order or judgment shall include a reasonable fee for the**  
14       **plaintiff's attorney of record. Any additional burden or expense on another medical**  
15       **practitioner, health care institution, or health care payer arising from the exercise of**  
16       **the right of conscience shall not be a defense to any violation of Sections 1 to 4 of this**  
17       **Act.**

18       ➔Section 5. Whereas it is crucial that the Commonwealth's regulatory policies  
19 reflect the statutory intent of the General assembly, an emergency is declared to exist, and  
20 this Act takes effect upon its passage and approval by the Governor or upon its otherwise  
21 becoming a law.