

SENATE BILL 2747

By Haile

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 63 and Title 68, relative to health care.

WHEREAS, the right of conscience is a fundamental right rooted in the history and tradition of the United States and central to the practice of medicine; and

WHEREAS, despite its preeminent importance, however, threats to the right of conscience of medical practitioners, healthcare institutions, and healthcare payers have become increasingly common and severe in recent years; and

WHEREAS, with this purpose in mind, it is the public policy of this State to protect the right of conscience for medical practitioners, healthcare institutions, and healthcare payers; and

WHEREAS, no medical practitioner, healthcare institution, or healthcare payer should be compelled to participate in or pay for any medical procedure or prescribe or pay for any medication to which the practitioner, institution, or payer objects on the basis of conscience, whether such conscience is informed by religious, moral, or ethical beliefs or principles; and

WHEREAS, is the purpose of this act to protect medical practitioners, healthcare institutions, and healthcare payers from discrimination, punishment, or retaliation as a result of conscientious medical objection; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding the following as a new part:

63-1-801. Short title.

This part is known and may be cited as the "Medical Ethics Defense Act."

63-1-802. Part definitions.

As used in this part:

(1) "Conscience" means the ethical, moral, or religious beliefs or principles held by a medical practitioner, healthcare institution, or healthcare payer. Conscience with respect to an institutional entity or corporate body, as opposed to an individual person, is determined by reference to that entity's 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;

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

(A) A violation of law, rule, or regulation;

(B) A violation of any ethical guidelines for the provision of a medical procedure or service; or

(C) Gross mismanagement, gross waste of funds, abuse of authority, methods of treatment that may put patient health at risk, or substantial and specific danger to public health or safety;

(3) "Discrimination":

(A) Means an adverse action taken against, or threat of adverse action communicated to, a medical practitioner, healthcare institution, or healthcare payer as a result of the practitioner, institution, or payer declining to participate in a medical procedure or service on the basis of conscience;

(B) Includes termination of employment; transfer or demotion from current position; adverse administrative action; reassignment to a different shift or job title; increased administrative duties; refusal of staff privileges; refusal of board certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a grant, contract, or other program; refusal to provide residency training opportunities; denial, deprivation, or disqualification of licensure; withholding or disqualifying from financial aid or other assistance; impediments to creating, expanding, or improving a healthcare institution or payer; impediments to acquiring, associating with, or merging with any other healthcare institution or payer; or another penalty or disciplinary or retaliatory action, whether executed or threatened; and

(C) Does not include negotiation or purchase of insurance by a non-government entity;

(4) "Healthcare institution":

(A) Means an organization, corporation, partnership, association, agency, network, sole proprietorship, joint venture, or other entity that provides medical procedures or services; and

(B) Includes a public or private hospital, clinic, medical center, physician organization, professional association, ambulatory surgical center, private physician's office, pharmacy, nursing home, medical school, nursing school, medical training facility, or another entity or location in which medical procedures or services are performed;

(5) "Healthcare payer" means an employer, health plan, health maintenance organization, insurance company, management services

organization, or other entity that pays for or arranges for the payment of, in whole or in part, a medical procedure or service provided to a patient;

(6) "Medical practitioner":

(A) Means an individual who may be or is asked to participate in a medical procedure or service; and

(B) Includes a physician, nurse practitioner, physician assistant, nurse, nurses' aide, allied health professional, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy technician or employee, medical school or nursing school faculty and students, psychology and counseling faculty and students, medical researcher, laboratory technician, psychologist, psychiatrist, counselor, mental health professional, social worker, or another person who facilitates or participates in the provision of a medical procedure or service;

(7) "Medical procedure or service":

(A) Means medical care provided to a patient or medical research; and

(B) Includes testing; diagnosis; referral; dispensing or administering any drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; record-making procedures; notes related to treatment; set up or performance of a surgery or procedure; or other care or services performed or provided by a medical practitioner;

(8) "Participate in a medical procedure or service" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, or admit for the purposes of providing a medical procedure or service; and

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

63-1-803. Rights of conscience.

(a) A medical practitioner, healthcare institution, or healthcare payer has the right not to participate in or pay for any medical procedure or service which violates the conscience of the medical practitioner, healthcare institution, or healthcare payer, as long as the exercise of this right does not impair the obligations, duties, or responsibilities required of the practitioner, institution, or payer under an existing contract.

(b) The exercise of the right of conscience is limited to objections to a particular medical procedure or service on the basis of conscience. This section does not waive or modify any duty a medical practitioner, healthcare institution, or healthcare payer may have to provide other medical procedures or services that do not violate the practitioner's, institution's, or payer's conscience.

(c) A medical practitioner, healthcare institution, or healthcare payer is not civilly, criminally, or administratively liable for exercising the right of conscience granted in subsection (a). A healthcare institution is not civilly, criminally, or administratively liable for the exercise of conscience rights not to participate in a medical procedure or service by a medical practitioner employed, contracted, or granted admitting privileges by the healthcare institution.

(d) A medical practitioner, healthcare institution, or healthcare payer must not be discriminated against for declining to participate in or pay for a medical procedure or service on the basis of conscience.

(e) Notwithstanding any this part to the contrary, a religious medical practitioner, healthcare institution, or healthcare payer that holds itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs, has the right to make employment, staffing, contracting, and admitting privilege decisions consistent with its religious beliefs, if such practitioner, institution, or payer is considered a religious corporation, association, educational institution, or society pursuant to 42 U.S.C.A. § 2000e-1, and otherwise in compliance with Title VII of the federal civil rights act.

(f) This part does not override the requirement to provide emergency medical treatment to all patients set forth in 42 U.S.C. § 1395dd.

63-1-804. Whistleblower protection.

(a) A medical practitioner must not be discriminated against in any manner because the medical practitioner:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the practitioner's employer; the attorney general and reporter of this state; any state agency charged with protecting healthcare rights of conscience; the United States department of health and human services, including the office of civil rights; or another federal agency charged with protecting healthcare rights of conscience information relating to any violation of, or any act or omission the medical practitioner reasonably believes to be a violation of, any provision of this part;

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

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

(b) Unless the disclosure is specifically prohibited by law, a medical practitioner must not be discriminated against in any manner because the medical practitioner disclosed information that the medical practitioner reasonably believes demonstrates:

(1) A violation of a law or rule;

(2) A violation of an ethical guideline for the provision of a medical procedure or service; or

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

(c) A department, agency, or other entity of this state shall not reprimand, sanction, or revoke or threaten to revoke a license, certification, or registration of a medical practitioner for engaging in speech or expressive activity that is protected from government interference by the first amendment to the United States Constitution, unless the department, agency, or other entity demonstrates beyond a reasonable doubt that the practitioner's speech was the direct cause of physical harm to a person with whom the medical practitioner had a practitioner-patient relationship within the three (3) years immediately preceding the incident of physical harm.

(d) A department, agency, or other entity of this state shall provide a medical practitioner with any complaints it has received which may result in the revocation of the medical practitioner's license, certification, or registration, within fourteen (14) days after receipt of the complaint.

(e) If the complaint is not provided to the medical practitioner within the fourteen-day period as required by subsection (d), then the department, agency, or other entity of this state must pay the medical practitioner an administrative penalty of five-hundred dollars (\$500) for each day after the fourteen-day period that the complaint is not provided to the medical practitioner.

63-1-805. Civil Remedies.

(a) A civil action for damages or injunctive relief, or both, may be brought by any medical practitioner, healthcare institution, or healthcare payer for a violation of this part. It is not a defense to any claim arising out of the violation of this part that such violation was necessary to prevent additional burden or expense on any other healthcare provider, healthcare institution, individual, or patient. However, a civil action must not be brought against an individual who declines to use or purchase a medical procedure or service from a specific medical practitioner, healthcare institution, or healthcare payer for exercising the rights granted in § 63-1-803(a).

(b) Any individual, association, corporation, entity, or healthcare institution injured by conduct prohibited by this part may commence a civil action and is entitled, upon the finding of a violation, to recover treble actual damages sustained; however, in no case shall recovery be less than five thousand dollars (\$5,000) for each violation, along with the costs of the action and reasonable attorney's fees. Damages are cumulative and are not limited by other remedies which may be available under federal, state, or municipal law. A court considering such civil action may also award injunctive relief, which may include, but is not limited to, reinstatement of a medical practitioner to the practitioner's previous position, reinstatement of board certification, and relicensure of a healthcare institution or healthcare payer.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.