

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 517

By Senators Maynard and Rucker

[Introduced January 30, 2023; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §30-3G-1, §30-3G-2, §30-3G-3, §30-3G-4, §30-3G-5, and §30-3G-6, all
 3 relating to creating the Medical Ethics Defense Act to protect medical practitioners,
 4 healthcare institutions, and healthcare payers from discrimination, punishment, or
 5 retaliation as a result of any instance of conscientious medical objection; providing short
 6 title; providing for definitions, legislative findings, and purpose; providing for rights of
 7 conscience of medical practitioners, healthcare Institutions, and healthcare payers;
 8 providing whistleblower protection; and setting forth civil remedies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3G. MEDICAL ETHICS DEFENSE (MED) ACT.

§30-3G-1. Short title.

1 This article may be known and cited as the "Medical Ethics Defense Act."

§30-3G-2. Legislative Findings and Purpose.

1 (a) The Legislature finds that the right of conscience is a fundamental and unalienable
 2 right. It was central to the founding of the United States, has been deeply rooted in our Nation's
 3 history and tradition for centuries, and has been central to the practice of medicine—through the
 4 Hippocratic Oath—for millennia.

5 (b) Despite its preeminent importance, however, threats to the right of conscience of
 6 medical practitioners, healthcare institutions, and healthcare payers have become increasingly
 7 common and severe in recent years. The swift pace of scientific advancement and the expansion
 8 of medical capabilities—along with the mistaken notion that medical practitioners, healthcare
 9 institutions, and healthcare payers are mere public utilities—promise only to make the current
 10 crisis worse, unless something is done to restore conscience to its rightful place.

11 (c) With this purpose in mind, the Legislature declares that it is the public policy of the State
 12 of West Virginia to protect the right of conscience for medical practitioners, healthcare institutions,

13 and healthcare payers.

14 (d) As the right of conscience is fundamental, no medical practitioner, healthcare
15 institution, or healthcare payer should be compelled to participate in or pay for any medical
16 procedure or prescribe or pay for any medication to which he, she, or it objects on the basis of
17 conscience, whether such conscience is informed by religious, moral, or ethical beliefs or
18 principles.

19 (e) It is the purpose of this article to protect medical practitioners, healthcare institutions,
20 and healthcare payers from discrimination, punishment, or retaliation as a result of any instance of
21 conscientious medical objection.

§30-3G-3. Definitions.

1 "Conscience" means the ethical, moral, or religious beliefs or principles held by any
2 medical practitioner, healthcare institution, or healthcare payer. Conscience with respect to
3 institutional entities or corporate bodies, as opposed to individual persons, is determined by
4 reference to that entity or body's governing documents, including but not limited to any published
5 ethical, moral, or religious guidelines or directives; mission statements; constitutions; articles of
6 incorporation; bylaws; policies; or regulations.

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

11 (1) Any violation of any law, rule, or regulation;

12 (2) Any violation of any ethical guidelines for the provision of any medical procedure or
13 service; or

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

16 public health or safety.

17 "Discrimination" means any adverse action taken against, or any threat of adverse action
18 communicated to, any medical practitioner, healthcare institution, or healthcare payer as a result
19 of his, her, or its decision to decline to participate in a medical procedure or service on the basis of
20 conscience. Discrimination includes, but is not limited to, termination of employment; transfer from
21 current position; demotion from current position; adverse administrative action; reassignment to a
22 different shift or job title; increased administrative duties; refusal of staff privileges; refusal of board
23 certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a
24 grant, contract, or other program; refusal to provide residency training opportunities; denial,
25 deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and other
26 assistance; impediments to creating any healthcare institution or payer or expanding or improving
27 said healthcare institution or payer; impediments to acquiring, associating with, or merging with
28 any other healthcare institution or payer; the threat thereof with regard to any of the preceding; or
29 any other penalty, disciplinary, or retaliatory action, whether executed or threatened. However,
30 discrimination excludes the negotiation or purchase of insurance by a non-government entity.

31 "Medical procedure or service" means medical care provided to any patient at any time
32 over the entire course of treatment, or medical research. This includes, but is not limited to, testing;
33 diagnosis; referral; dispensing and/or administering any drug, medication, or device;
34 psychological therapy or counseling; research; prognosis; therapy; record making procedures;
35 notes related to treatment; set up or performance of a surgery or procedure; or any other care or
36 services performed or provided by any medical practitioner including, but not limited to,
37 physicians, nurses, allied health professionals, paraprofessionals, contractors, or employees of
38 healthcare institutions.

39 "Healthcare institution" means any organization, corporation, partnership, association,
40 agency, network, sole proprietorship, joint venture, or other entity that provides medical

41 procedures or services. The term includes, but is not limited to, any public or private hospital,
42 clinic, medical center, physician organization, professional association, ambulatory surgical
43 center, private physician's office, pharmacy, nursing home, medical school, nursing school,
44 medical training facility, or any other entity or location in which medical procedures or services are
45 performed.

46 "Healthcare payer" means any employer, health plan, health maintenance organization,
47 insurance company, management services organization, or any other entity that pays for—or
48 arranges for the payment of—any medical procedure or service provided to any patient, whether
49 that payment is made in whole or in part.

50 "Medical practitioner" means any person or individual who may be or is asked to participate
51 in any way in any medical procedure or service. This includes, but is not limited to, doctors, nurse
52 practitioners, physician's assistants, nurses, nurses' aides, allied health professionals, medical
53 assistants, hospital employees, clinic employees, nursing home employees, pharmacists,
54 pharmacy technicians and employees, medical school faculty and students, nursing school faculty
55 and students, psychology and counseling faculty and students, medical researchers, laboratory
56 technicians, psychologists, psychiatrists, counselors, mental health professionals, social workers,
57 or any other person who facilitates or participates in the provision of a medical procedure or
58 service.

59 "Participate" in a medical procedure or service means to provide, perform, assist with,
60 facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take
61 part in any way in providing any medical procedure or service, or any form of such service.

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

§30-3G-4. Rights of Conscience of Medical Practitioners, Healthcare Institutions, and

Healthcare

Payers.

1 (a) Freedom of Conscience. A medical practitioner, healthcare institution, or healthcare
2 payer has the right not to participate in or pay for any medical procedure or service which violates
3 his, her, or its conscience.

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

9 (c) Immunity from Liability. No medical practitioner, healthcare institution, or healthcare
10 payer may be civilly, criminally, or administratively liable for exercising his, her, or its right of
11 conscience not to participate in or pay for a medical procedure or service. No healthcare institution
12 may be civilly, criminally, or administratively liable for the exercise of conscience rights not to
13 participate in a medical procedure or service by a medical practitioner employed, contracted, or
14 granted admitting privileges by the healthcare institution.

15 (d) Discrimination. No medical practitioner, healthcare institution, or healthcare payer may
16 be discriminated against in any manner as a result of his, her, or its decision to decline to
17 participate in or pay for a medical procedure or service on the basis of conscience.

18 (e) Exception. Notwithstanding any other provision of this Act to the contrary, a religious
19 medical practitioner, healthcare institution, or healthcare payer that holds itself out to the public as
20 religious, states in its governing documents that it has a religious purpose or mission, and has
21 internal operating policies or procedures that implement its religious beliefs, may make
22 employment, staffing, contracting, and admitting privilege decisions consistent with its religious
23 beliefs.

24 (f) Opt-In Required. A health care practitioner may not be scheduled for, assigned, or
25 requested to directly or indirectly perform, facilitate, refer for, or participate in an abortion unless

26 the practitioner first affirmatively consents in writing to perform, facilitate, refer for, or participate in
27 the abortion.

28 (g) Emergency Medical Treatments. Nothing herein shall be construed to override the
29 requirement to provide emergency medical treatment to all patients set forth in 42 U.S.C. §
30 1395dd.

§30-3G-5. Whistleblower Protection.

1 (a) No medical practitioner may be discriminated against in any manner because the
2 medical practitioner:

3 (1) Provided, caused to be provided, or is about to provide or cause to be provided to his or
4 her employer, the Attorney General or any state agency charged with protecting health care rights
5 of conscience, any state agency charged with protecting health care rights of conscience, the U.S.
6 Department of Health and Human Services, Office of Civil Rights, or any other federal agency
7 charged with protecting health care rights of conscience information relating to any violation of, or
8 any act or omission the medical practitioner reasonably believes to be a violation of, any provision
9 of this article;

10 (A) Testified or is about to testify in a proceeding concerning the violation; or

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

12 (b) Unless the disclosure is specifically prohibited by law, no medical practitioner may be
13 discriminated against in any manner because the medical practitioner disclosed any information
14 that the medical practitioner reasonably believes evinces:

15 (1) Any violation of any law, rule, or regulation;

16 (2) Any violation of any ethical guidelines for the provision of any medical procedure or
17 service; or

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

20 public health or safety.

21 (c) A board, may not reprimand, sanction, or revoke or threaten to revoke a license,
22 certificate, or registration of a health care practitioner for engaging in speech or expressive activity
23 protected under the First Amendment to the U.S. Constitution, unless the board demonstrates
24 beyond a reasonable doubt that the practitioner’s speech was the direct cause of physical harm to
25 a person with whom the health care practitioner had a practitioner-patient relationship within the 3
26 years immediately preceding the incident of physical harm.

27 (1) The board shall provide a medical practitioner with any complaints it has received which
28 may result in the revocation of the medical practitioner’s license, certification, or registration, within
29 seven days after receipt of the complaint.

30 (2) The board shall pay the medical practitioner an administrative penalty of \$500 for each
31 day the complaint is not provided to the medical practitioner after the specified 7 days.

§30-3G-6. Civil Remedies.

1 (a) Civil Action for Violation of Right of Conscience. A civil action for damages or injunctive
2 relief—or both—may be brought by any medical practitioner, healthcare institution, or healthcare
3 payer for any violation of any provision of this article. Any additional burden or expense on another
4 medical practitioner, healthcare institution, or healthcare payer arising from the exercise of the
5 right of conscience shall not be a defense to any violation of this article. However, no civil action
6 may be brought against an individual who declines to use or purchase medical procedure or
7 services from a specific medical practitioner, healthcare institution, or healthcare payer for
8 exercising the rights granted in §30-3G-4(a) of this code.

9 (b) Other Remedies. Any party aggrieved by any violation of this article may commence a
10 civil action and shall be entitled—upon the finding of a violation—to recover threefold his, her, or its
11 actual damages sustained (but in no case may recovery be less than \$10,000), along with the
12 costs of the action and reasonable attorney’s fees. The damages shall be cumulative and in no

13 way limited by any other remedies which may be available under any other federal, state, or
14 municipal law. A court considering such civil action may also award injunctive relief, which may
15 include, but is not limited to, reinstatement of a medical practitioner to his or her previous position,
16 reinstatement of board certification, and re-licensure of a healthcare institution or healthcare
17 payer.

NOTE: The purpose of this bill is to protect medical practitioners, healthcare institutions, and healthcare payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.