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SENATE BILL DRS15249-NB-123

Short Title: Medical Ethics Defense (MED) Act. (Public)

Sponsors: Senators Hise, B. Newton, and Sanderson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE RIGHT OF CONSCIENCE OF MEDICAL PRACTITIONERS,
3 HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS.

4 Whereas, the right of conscience is a fundamental and unalienable right, and was
5 central to the founding of the United States of America and deeply rooted in the United States'
6 history and tradition for centuries; and

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

13 Whereas, it is the public policy of the State of North Carolina to protect the right of
14 conscience for medical practitioners, health care institutions, and health care payers; and

15 Whereas, the right of conscience is fundamental, and no medical practitioner, health
16 care institution, or health care payer should be compelled to participate in a health care service
17 that they object to on the basis of conscience, whether such conscience is informed by religious,
18 moral, ethical, or philosophical beliefs or principles; and

19 Whereas, it is the purpose of this act to protect medical practitioners, health care
20 institutions, and health care payers from discrimination, punishment, or retaliation as a result of
21 an instance of conscientious medical objection; Now, therefore,

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new Article
24 to read:

25 "Article 1M.

26 "Medical Ethics Defense Act.

27 "**§ 90-21.140. Short title.**

28 This Article shall be known and may be cited as the "Medical Ethics Defense Act."

29 "**§ 90-21.141. Definitions.**

30 The following definitions apply in this Article:

31 (1) Conscience. – Any of the following:

32 a. The religious, moral, or ethical beliefs or principles held by any
33 medical practitioner, health care institution, or health care payer.

34 b. Any published religious, moral, or ethical guidelines or directives,
35 mission statements, articles of incorporation, bylaws, policies, or



- 1 regulations published or created by institutional entities or corporate
2 bodies.
- 3 (2) Disclosure. – A formal or informal communication or transmission, excluding
4 a communication or transmission concerning policy decisions that lawfully
5 exercise discretionary authority, unless the medical practitioner providing the
6 disclosure or transmission reasonably believes that the disclosure or
7 transmission evinces any of the following:
- 8 a. Any violation of law, rule, or regulation.
9 b. Any violation of any ethical guidelines for the provision of any health
10 care service.
11 c. Gross mismanagement, a gross waste of funds, an abuse of authority,
12 or a substantial and specific danger to public health or safety.
- 13 (3) Discrimination. – Any adverse action or threat of adverse action against or
14 communicated to any medical practitioner, health care payer, or health care
15 institution as a result of his, her, or its decision to decline to participate in a
16 health care service on the basis of conscience, including any of the following,
17 with the exception of the negotiation or purchase of insurance by a
18 nongovernmental entity:
- 19 a. Termination of employment.
20 b. Transfer or demotion from current position.
21 c. Adverse administrative action.
22 d. Reassignment to a different shift or job title.
23 e. Increased administrative duties.
24 f. Refusal of staff privileges.
25 g. Refusal of board certification or loss of career specialty.
26 h. Reduction of wages, benefits, or privileges.
27 i. Refusal to award a grant, contract, or other program.
28 j. Refusal to provide residency training opportunities.
29 k. Denial, deprivation, or disqualification of licensure.
30 l. Withholding or disqualifying from financial aid and other assistance.
31 m. Impediments to creating any health care institution or payer or
32 expanding or improving that health care institution or payer.
33 n. Impediments to acquiring, associating, or merging with any other
34 health care institution or payer.
35 o. The threat of any action listed in this subdivision or any other penalty,
36 disciplinary, or retaliatory action.
- 37 (4) Health care institution. – Any public or private hospital, clinic, medical center,
38 physician organization, professional association, ambulatory surgical center,
39 private physician's office, pharmacy, nursing home, medical or nursing
40 school, medical training facility, organizations, corporations, partnerships,
41 associations, agencies, networks, sole proprietorships, joint ventures, or any
42 other entity or location in which health care services are performed on behalf
43 of any person or which provides health care services.
- 44 (5) Health care payer. – Any employer, health plan, health maintenance
45 organization, insurance company, management services organization, or any
46 other entity that pays for or arranges for the payment, in whole or in part, of
47 any health care service provided to any patient.
- 48 (6) Health care service. – Medical care provided to any patient at any time over
49 the entire course of treatment, including testing; diagnosis; referral;
50 dispensing or administering any drug, medication, or device; psychological
51 therapy or counseling; research; prognosis; therapy; record-making

1 procedure; notes related to treatment; set-up or performance of a surgery or
2 procedure; or any other care or services performed or provided by any medical
3 practitioner, allied health professionals, paraprofessionals, or employees of a
4 health care institution.

5 (7) Medical practitioner. – Any person or individual who may be or is asked to
6 participate in a health care service in the normal course of employment,
7 including physicians, nurse practitioners, physician assistants, registered
8 nurses, nurse aides, allied health professionals, medical assistants, hospital
9 employees, clinic employees, nursing home employees, pharmacists,
10 pharmacy technicians and employees, medical school faculty and students,
11 nursing school faculty and students, psychology and counseling faculty and
12 students, medical researchers, laboratory technicians, counselors, social
13 workers, or any other person who facilitates or participates in the provision of
14 health care services to any person.

15 (8) Participation in a health care service. – Performance, assistance, referral,
16 consultation with, or admittance of any person or individual to provide any
17 health care service.

18 (9) Pay or payment. – To pay for, contract for, arrange for the payment of,
19 reimburse, or remunerate, in whole or in part.

20 **"§ 90-21.142. Protections.**

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

23 (b) No medical practitioner, health care institution, or health care payer shall be civilly,
24 criminally, or administratively liable for exercising his, her, or its right of conscience not to
25 participate in or pay for a health care service. No health care institution shall be civilly,
26 criminally, or administratively liable for the exercise of conscience rights not to participate in a
27 health care service by a medical practitioner employed, contracted, or granted admitting
28 privileges by the health care institution.

29 (c) It shall be unlawful for any person to discriminate against any medical practitioner,
30 health care institution, or health care payer that refuses to participate in or pay for a health care
31 service on the basis of conscience under this Article.

32 **"§ 90-21.143. Exemption; limitation.**

33 (a) Notwithstanding any other provision of law, any medical practitioner, health care
34 institution, or health care payer that holds itself out to the public as religious, states in its
35 governing documents that it has a religious purpose or mission, and has internal operating
36 policies or procedures that implement its religious beliefs shall have the right to make
37 employment, staffing, contracting, and admitting privilege decisions consistent with its religious
38 beliefs.

39 (b) No provision of this Article shall be construed to override the requirement to provide
40 emergency medical treatment to a patient in accordance with 42 U.S.C. § 1395dd, et seq.

41 (c) This Article shall be supplemental to existing protections of the right of conscience
42 recognized in this State contained in the General Statutes and the North Carolina Constitution
43 and shall not be construed to abridge, limit, or take away any existing protections.

44 (d) Exercise of any right of conscience under this Article shall be limited to
45 conscience-based objections to particular health care services.

46 (e) A health care practitioner may not be scheduled for, assigned, or requested to directly
47 or indirectly perform, facilitate, refer for, or participate in an abortion unless the health care
48 practitioner affirmatively consents in writing prior to performing, facilitating, referring, or
49 participating in the abortion.

50 **"§ 90-21.144. Civil remedies.**

1 (a) A civil action for damages or injunctive relief may be brought by any medical
2 practitioner, health care institution, or health care payer for any violation of any provision of this
3 Article. Any additional burden or expense on another medical practitioner, health care institution,
4 or health care payer arising from the exercise of the right of conscience shall not be a defense to
5 any violation of this Article. No civil action may be brought against an individual who declines
6 to use or purchase health care services from a specific medical practitioner, health care institution,
7 or health care payer for exercising the rights granted in this Article.

8 (b) Any party aggrieved by any violation of this Article may commence a civil action and
9 shall be entitled, upon the finding of a violation, to recover the following:

10 (1) Statutory damages equal to three times the cost of the actual damages
11 sustained by the aggrieved party. Damages recovered under this subdivision
12 shall be cumulative and not limited by any other remedies which may be
13 available under any other federal, State, or municipal law.

14 (2) Total costs of the action and reasonable attorneys' fees.

15 (c) Injunctive Relief. – Injunctive relief may be obtained to reinstate a medical
16 practitioner to a previous position, reinstate board certification, or re-license a health care
17 institution or health care payer.

18 **"§ 90-21.145. Protection from retaliation.**

19 (a) No medical practitioner shall be discriminated against in any manner because the
20 medical practitioner does any of the following:

21 (1) Provided, caused to be provided, or takes steps to provide or cause to be
22 provided to his or her employer, the Attorney General, any State agency, the
23 United States Department of Health and Human Services, or any other federal
24 agency, any information or an act or omission that is a violation of any
25 provision of this Article.

26 (2) Testified or prepared to testify in a proceeding concerning a violation of this
27 Article.

28 (3) Assisted or participated in a proceeding concerning a violation of this Article.

29 (b) Unless a disclosure or report of information is specifically prohibited by law, no
30 medical practitioner shall be discriminated against in any manner because the medical
31 practitioner disclosed any information under this Article that the medical practitioner reasonably
32 believes evinces any of the following:

33 (1) Any violation of law, rule, or regulation.

34 (2) Any violation of any standard of care or other ethical guidelines for the
35 provision of any health care service.

36 (3) Gross mismanagement, a gross waste of funds, an abuse of authority, or a
37 substantial and specific danger to public health or safety.

38 (c) An occupational licensing board or the Department of Health and Human Services
39 shall not issue disciplinary action against a medical practitioner for engaging in speech or
40 expressive activity protected under the First Amendment of the Constitution of the United States,
41 unless the occupational licensing board or Department demonstrates beyond a reasonable doubt
42 that the medical practitioner's speech was the direct cause of harm to a person with whom the
43 medical practitioner had a practitioner-patient relationship within the three years immediately
44 preceding the incident of physical harm. If a complaint is received against a medical practitioner,
45 then the occupational licensing board or Department must provide a copy of the complaint to the
46 medical practitioner within seven days of receipt of the complaint. If the occupational licensing
47 board or Department fails to provide this required notice, then it constitutes a violation of this
48 subsection. A violation of this subsection shall be punished by a five hundred dollar (\$500.00)
49 fine for each day the complaint is not provided after seven days. The clear proceeds of a penalty
50 assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in
51 accordance with G.S. 115C-457.2."

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

5 **SECTION 3.** This act becomes effective October 1, 2023.