

1 AN ACT protecting the exercise of medical ethics and diversity 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, ethical, or philosophical beliefs or*  
8 *principles held by any medical practitioner, healthcare institution, or healthcare*  
9 *payer. Conscience with respect to institutional entities or corporate bodies, as*  
10 *opposed to individual persons, is determined by reference to that entity or body's*  
11 *governing documents, including but not limited to any published religious,*  
12 *moral, ethical, or philosophical guidelines or directives, mission statements,*  
13 *articles of incorporation, bylaws, policies, or regulations;*

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

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

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

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

24 *(3) "Discrimination" means any adverse action taken against, or any threat of*  
25 *adverse action communicated to, any medical practitioner, healthcare institution,*  
26 *or healthcare payer as a result of his, her, or its decision to decline to participate*  
27 *in a healthcare service on the basis of conscience. Discrimination includes but is*

1 not limited to termination of employment; transfer from current position;  
2 demotion from current position; adverse administrative action; reassignment to a  
3 different shift or job title; increased administrative duties; refusal of staff  
4 privileges; refusal of board certification; loss of career specialty; reduction of  
5 wages, benefits, or privileges; refusal to award or renew a grant, contract, or  
6 other program; refusal to provide residency training opportunities; denial,  
7 deprivation, or disqualification of licensure; withholding or disqualifying from  
8 financial aid and other assistance; reducing, excluding, terminating, materially  
9 altering the terms or conditions of, or otherwise making unavailable or denying,  
10 any grant, contract, subcontract, cooperative agreement, guarantee, loan, or  
11 other similar program or benefit; impediments to creating any healthcare  
12 institution or payer or expanding or improving that healthcare institution or  
13 payer; impediments to acquiring, associating with, or merging with any other  
14 healthcare institution or payer; the threat thereof with regard to any of the  
15 preceding; or any other penalty, disciplinary, or retaliatory action, whether  
16 executed or threatened;

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

24 (5) "Healthcare institution" means any public or private hospital, clinic, medical  
25 center, professional association, ambulatory surgical center, private physician's  
26 office, pharmacy, nursing home, medical school, nursing school, medical  
27 training facility, or any other entity or location in which healthcare services are

1 performed on behalf of any person. Healthcare institutions may include but are  
 2 not limited to organizations, corporations, partnerships, associations, agencies,  
 3 networks, sole proprietorships, joint ventures, or any other entity that provides  
 4 healthcare services;

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

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

18 (8) "Participate in a healthcare 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 healthcare service or any  
 21 form of such a service; and

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

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

26 (1) A medical practitioner, healthcare institution, or healthcare payer shall have the  
 27 right not to participate in or pay for any healthcare service which violates his,

- 1        her, or its conscience.
- 2        (2) A medical practitioner, healthcare institution, or healthcare payer shall not be  
3        liable civilly, criminally, or administratively for his, her, or its decision to decline  
4        to participate in or pay for a healthcare service on the basis of conscience, unless  
5        the decision of the healthcare provider violates the standard of care required of  
6        that healthcare provider.
- 7        (3) No medical practitioner, healthcare institution, or healthcare payer shall be  
8        subject to discrimination in any manner as a result of his, her, or its decision to  
9        decline to participate in or pay for a healthcare service on the basis of conscience.
- 10       (4) Notwithstanding any other provision of Sections 1 to 4 of this Act to the contrary,  
11       a religious medical practitioner, healthcare institution, or healthcare payer that  
12       holds itself out to the public as religious, states in its governing documents that it  
13       has a religious purpose or mission, and has internal operating policies or  
14       procedures that implement its religious beliefs shall have the right to make  
15       employment, staffing, contracting, and admitting privilege decisions consistent  
16       with its religious beliefs.
- 17       (5) Nothing in Sections 1 to 4 of this Act shall be construed to override the  
18       requirement to provide emergency medical treatment to all patients with an  
19       emergency medical condition as set forth in 42 U.S.C. sec. 1395dd (e)(1), the  
20       Emergency Medical Treatment and Active Labor Act (EMTALA), state and  
21       federal laws on sexual assault forensic medical examinations (SAFE exams), or  
22       any other federal or state law governing emergency medical conditions and their  
23       treatment. "Emergency medical condition" as defined under U.S.C sec 1395dd  
24       (e)(1) or any other federal or state law shall be applicable to all persons or entities  
25       subject to Sections 1 to 4 of this Act.
- 26       (6) Nothing in Sections 1 to 4 of this Act shall be construed to change the applicable  
27       standard of care related to any healthcare service.

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

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

4           (a) Provided, caused to be provided, or is about to provide to his or her  
5           employer, the Attorney General, any agency of the Commonwealth charged  
6           with protecting healthcare rights of conscience, the United States  
7           Department of Health and Human Services, Office for Civil Rights, or any  
8           other federal agency charged with protecting healthcare rights of  
9           conscience with information relating to any violation, act, or omission the  
10           medical practitioner reasonably believes to be a violation of any provision of  
11           Sections 1 to 4 of this Act;

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

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

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

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

19           (b) A violation of a standard of care or other ethical guideline for the provision  
20           of healthcare services; or

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

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

25 Any person injured by a violation of Sections 1 to 4 of this Act shall have a civil cause  
26 of action in the Circuit Court of appropriate jurisdiction to enjoin further violations, to  
27 recover the actual damages sustained, and to recover the costs of the lawsuit and to

1 provide any other appropriate relief, which may include reinstatement of a medical  
2 practitioner to his or her previous position, reinstatement of board certification, and  
3 relicensure of a healthcare institution or healthcare payer. If a violation is found to  
4 have occurred, the court's order or judgment shall include a reasonable fee for the  
5 plaintiff's attorney of record. Any additional burden or expense on another medical  
6 practitioner, healthcare institution, or healthcare payer arising from the exercise of the  
7 right of conscience shall not be a defense to any violation of Sections 1 to 4 of this Act.

8       ➔Section 5. Sections 1 to 4 of this Act may be cited as the Medical Ethics and  
9 Diversity Act.