

1 AN ACT relating to the recruitment and retention of medical professionals and
2 declaring an emergency.

3 WHEREAS, Kentucky has a statewide hospital workforce vacancy rate of 17.1
4 percent; and

5 WHEREAS, many faith-based medical organizations would rather stop practicing
6 medicine than be forced to violate their conscience; and

7 WHEREAS, it is common for doctors, medical students, and other health care
8 professionals to face discrimination for declining to participate in activities or provide
9 medical procedures to which they have moral or religious objections; and

10 WHEREAS, forcing doctors, nurses, and other health care professionals to violate
11 their conscience could exacerbate and lead to additional increases in shortages, depriving
12 Kentucky patients of critical care; and

13 WHEREAS, neighboring states have provided comprehensive protections for rights
14 of conscience in the practice of medicine since as early as 1977; and

15 WHEREAS, Kentucky law does not currently provide a legal remedy for health
16 care professionals who are forced to violate their conscience; and

17 WHEREAS, Kentucky patients benefit from conscience-informed medical care;
18 and

19 WHEREAS, Section 5 of the Constitution of Kentucky requires that "No human
20 authority shall, in any case whatever, control or interfere with the rights of conscience.";
21 and

22 WHEREAS, conscience-driven health care professionals care for patients even
23 when they cannot according to their conscience provide particular medical procedures;
24 and

25 WHEREAS, the federal Emergency Medical Treatment and Active Labor Act
26 requires treatment for emergency medical conditions, and only nonemergency medical
27 services can be declined for reasons of conscience;

1 NOW, THEREFORE,

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

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

5 *Nothing in Sections 1 to 6 of this Act shall be construed to override the requirement to:*

6 *(1) Provide emergency medical treatment to all patients as set forth in 42 U.S.C. sec.*
7 *1395dd or any other federal law governing emergency medical treatment; or*

8 *(2) Conduct examinations and collect evidence set forth in federal law governing*
9 *sexual assault crimes.*

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

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

13 *(1) "Conscience" means the sincerely held religious, moral, or ethical principles*
14 *held by a medical practitioner, a health care institution, or a health care payer.*
15 *For purposes of Sections 1 to 6 of this Act, a health care institution or health care*
16 *payer's conscience shall be determined by reference to its existing or proposed*
17 *governing documents, including religious, moral, or ethical guidelines, mission*
18 *statement, constitution, bylaws, articles of incorporation, policies, regulations, or*
19 *other relevant documents;*

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

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

26 *(b) A violation of any standard of care or other ethical guidelines for the*
27 *provision of any medical service; or*

- 1 (c) Gross mismanagement, a gross waste of funds, an abuse of authority,
2 practices or methods of treatment that may put patient health at risk, or a
3 substantial and specific danger to public health or safety;
- 4 (3) "Discrimination" means any adverse action taken against, or any threat of
5 adverse action communicated to, a medical practitioner, health care institution,
6 or health care payer as a result of his, her, or its decision to decline to participate
7 in a medical service on the basis of conscience. "Discrimination" includes but is
8 not limited to:
- 9 (a) Termination of employment;
10 (b) Transfer or demotion from current position;
11 (c) Adverse administrative action;
12 (d) Reassignment to a different shift or job title;
13 (e) Refusal of staff privileges;
14 (f) Refusal of board certification;
15 (g) Loss of career specialty;
16 (h) Reduction of wages, benefits, or privileges;
17 (i) Refusal to award a grant, contract, or other program;
18 (j) Refusal to provide residency training opportunities;
19 (k) Denial, deprivation, or disqualification of licensure;
20 (l) Withholding or disqualifying from financial aid and other assistance;
21 (m) Reducing, excluding, terminating, materially altering the terms of
22 conditions of, or otherwise making unavailable or denying, any grant,
23 contract, subcontract, cooperative agreement, guarantee, loan, or other
24 similar program or benefit;
25 (n) Impediments to creating any health care institution or payer or expanding
26 or improving that health care institution or payer;
27 (o) Impediments to acquiring, associating with, or merging with any other

1 health care institution or payer;

2 (p) The threat with regard to any of the actions in paragraphs (a) to (o) of this
3 subsection; or

4 (q) Any other penalty, disciplinary, or retaliatory action, whether executed or
5 threatened;

6 (4) "Health care institution" means any public or private hospital, clinic, medical
7 center, professional association, ambulatory surgical center, private physician's
8 office, pharmacy, nursing home, medical school, nursing school, medical
9 training facility, or any other entity or location in which medical services are
10 performed on behalf of any person. "Health care institutions" includes but is not
11 limited to organizations, corporations, partnerships, associations, agencies,
12 networks, sole proprietorships, joint ventures, or any other entity that provides
13 medical services;

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

23 (6) "Medical service" means medical care provided to any patient at any time over
24 the entire course of treatment or medical research, including but not limited to:

25 (a) Testing;

26 (b) Diagnosis;

27 (c) Referral;

- 1 (d) Dispensing or administering any drug, medication, or device;
2 (e) Psychological therapy or counseling;
3 (f) Recordkeeping procedures;
4 (g) Notes related to treatments;
5 (h) Research;
6 (i) Prognosis;
7 (j) Therapy;
8 (k) Creating medical records; or
9 (l) Any other medical care or necessary medical services performed or provided
10 by any medical practitioner;

11 (7) "Participate in a medical service" means to provide, perform, assist with,
12 facilitate, refer for, counsel for, consult with regard to, admit for the purposes of
13 providing, or take part in any way in providing, any medical service or any form
14 of such a service; and

15 (8) "Regulated healthcare entity" means any medical practitioner, health care
16 institution, or health care payer that is certified, authorized, or licensed by the
17 Commonwealth of Kentucky, or that receives any form of state funding or state
18 insurance reimbursement.

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

21 (1) A medical practitioner or health care institution shall have the right to not
22 participate in or pay for any medical service which violates his, her, or its
23 conscience. A health care payer shall not decline to pay for a medical procedure
24 or service it is contractually obligated to pay for under the terms of its contract
25 with an insured party.

26 (2) A medical practitioner or health care institution shall not be liable civilly,
27 criminally, or administratively for exercising his, her, or its right of conscience

1 with respect to a medical service.

2 (3) A medical practitioner or health care institution shall not be subject to
 3 discrimination in any manner by the Commonwealth, any of its political
 4 subdivisions, or any regulated health care entity as a result of his, her, or its
 5 decision to decline to participate in a medical service on the basis of conscience.

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

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

13 (1) A medical practitioner shall not be discriminated against because he or she:

14 (a) Provided, caused to be provided, or is about to provide to his or her
 15 employer, the Attorney General, any agency of the Commonwealth charged
 16 with protecting health care rights of conscience, the United States
 17 Department of Health and Human Services, Office for Civil Rights, or any
 18 other federal agency charged with protecting health care rights of
 19 conscience with information relating to any violation, act, or omission the
 20 medical practitioner reasonably believes to be a violation of any provision of
 21 Sections 1 to 6 of this Act;

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

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

25 (2) Unless the disclosure is prohibited by law, a medical practitioner shall not be
 26 discriminated against because he or she disclosed information that he or she
 27 reasonably believes evinces:

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

2 (b) A violation of a standard of care or other ethical guideline for the provision
3 of medical services; or

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

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

9 (1) The State Board of Medical Licensure shall not reprimand, sanction, deny,
10 revoke or threaten to revoke a license, certification, or registration of a medical
11 practitioner for engaging in speech or expressive activity that is protected by the
12 First Amendment to the United States Constitution, unless the board
13 demonstrates beyond a reasonable doubt that the medical practitioner's speech
14 was the direct cause of physical harm to a person with whom the practitioner had
15 a practitioner-patient relationship within the three (3) years immediately
16 preceding the incident of physical harm.

17 (2) The State Board of Medical Licensure shall provide a medical practitioner with
18 any complaints it has received which may result in the revocation of the medical
19 practitioner's license, certification, or registration within twenty-one (21) days
20 after receipt of the complaint. The board shall pay the medical practitioner an
21 administrative penalty of five hundred dollars (\$500) for each day the complaint
22 is not provided to the medical practitioner after the specified twenty-one (21) day
23 period.

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

26 (1) Any person injured by a violation of Sections 1 to 6 of this Act shall have a civil
27 cause of action in the Circuit Court of competent jurisdiction to enjoin further

1 violations, to recover the actual damages sustained, and to recover the costs of the
2 lawsuit and to provide any other appropriate relief, which may include
3 reinstatement of a medical practitioner to his or her previous position,
4 reinstatement of board certification, and relicensure of a health care institution
5 or health care payer.

6 (2) If a violation is found to have occurred, the court's order or judgment shall
7 include a reasonable attorney's fee.

8 (3) Any additional burden or expense on another medical practitioner, health care
9 institution, or health care payer arising from the exercise of the right of
10 conscience shall not be a defense to any violation of Sections 1 to 6 of this Act.

11 ➔Section 7. If any provision of this Act or the application thereof to any person
12 or circumstance is held invalid, the invalidity shall not affect other provisions or
13 applications of the Act that can be given effect without the invalid provision or
14 application, and to this end the provisions of this Act are severable.

15 ➔Section 8. This Act may be cited as the Healthcare Heroes Recruitment and
16 Retention Act.

17 ➔Section 9. Whereas it is crucial that the Commonwealth's regulatory policies
18 reflect the statutory intent of the General Assembly, an emergency is declared to exist,
19 and this Act takes effect upon its passage and approval by the Governor or upon its
20 otherwise becoming a law.