

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

3 WHEREAS, Kentucky has a statewide hospital workforce vacancy rate of 8.9
4 percent; and

5 WHEREAS, forcing health care professionals to violate their conscience could
6 force them out of their profession and prevent or discourage students from entering the
7 medical field; and

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

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

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

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

18 NOW, THEREFORE,

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

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

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

23 *(1) Provide emergency medical treatment to all patients as set forth in 42 U.S.C. sec.*
24 *1395dd or any other federal law governing emergency medical treatment; or*
25 *(2) Conduct examinations and collect evidence set forth in federal law governing*
26 *sexual assault crimes.*

27 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO

1 READ AS FOLLOWS:

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

3 **(1) "Conscience" means the sincerely held religious, moral, or ethical principles**
4 **held by a health care professional or a health care institution. For purposes of**
5 **Sections 1 to 6 of this Act, a health care institution's conscience shall be**
6 **determined by reference to its existing or proposed governing documents,**
7 **including religious, moral, or ethical guidelines, mission statement, constitution,**
8 **bylaws, articles of incorporation, policies, regulations, or other relevant**
9 **documents;**

10 **(2) "Disclosure" means a formal or informal communication or transmission, but**
11 **does not include a communication or transmission concerning policy decisions**
12 **that lawfully exercise discretionary authority, unless the health care professional**
13 **providing the communication or transmission reasonably believes that the**
14 **communication or transmission evinces:**

15 **(a) A violation of any law, rule, or regulation;**
16 **(b) A violation of any standard of care or other ethical guidelines for the**
17 **provision of any health care service; or**
18 **(c) Gross mismanagement or waste of funds, abuse of authority, practices or**
19 **methods of treatment that may put patient or client health at risk, or a**
20 **substantial and specific danger to public health or safety;**

21 **(3) "Discrimination":**

22 **(a) Means any adverse action taken against, or any threat of adverse action**
23 **communicated to, a health care professional or health care institution as a**
24 **result of exercising his, her, or its rights under Sections 1 to 6 of this Act;**
25 **(b) Includes but is not limited to any penalty, disciplinary, or retaliatory action,**
26 **whether executed or threatened; and**
27 **(c) Does not include:**

- 1 1. The negotiation or purchase of, or the refusal to use or purchase,
2 health care services by an individual or nongovernmental entity; or
- 3 2. Good-faith efforts to accommodate a health care professional or
4 health care institution who exercises the rights protected under
5 Sections 1 to 6 of this Act;

6 (4) "Health care institution":

- 7 (a) Means any public or private hospital, clinic, medical center, professional
8 association, ambulatory surgical center, private physician's office,
9 pharmacy, nursing home, medical school, nursing school, medical training
10 facility, or any other entity or location in which health care services are
11 performed; and
- 12 (b) Includes but is not limited to organizations, corporations, partnerships,
13 associations, agencies, networks, sole proprietorships, joint ventures, or any
14 other entity that provides health care services;

15 (5) "Health care professional":

- 16 (a) Means any person or individual who is authorized to participate in a health
17 care service; and
- 18 (b) Includes but is not limited to doctors, nurse practitioners, physician's
19 assistants, nurses, nurse's aides, allied health professionals, medical
20 assistants, hospital employees, clinic employees, nursing home employees,
21 pharmacists, pharmacy technicians and employees, medical school faculty
22 and students, nursing faculty and students, psychology and counseling
23 faculty and students, medical researchers, laboratory technicians,
24 counselors, and social workers;

25 (6) "Health care service" means medical research or health care provided to any
26 patient or client at any time over the entire course of treatment or medical
27 research, including but not limited to:

- 1 (a) Testing;
- 2 (b) Diagnosis;
- 3 (c) Referral;
- 4 (d) Dispensing or administering any drug, medication, or device;
- 5 (e) Psychological therapy or counseling;
- 6 (f) Recordkeeping procedures;
- 7 (g) Creating medical records and notes related to treatments;
- 8 (h) Prognosis; or
- 9 (i) Therapy;

10 (7) "Hiring or licensing authority" means any official, board, commission, or
11 department of the Commonwealth of Kentucky, its agencies, or political
12 subdivisions, responsible by law for the hiring of persons for public employment
13 or the licensing of persons for occupations;

14 (8) "Participate in a health care service" means to provide, perform, assist with,
15 facilitate, refer for, counsel for, consult with regard to, admit for the purposes of
16 providing, or take part in any way in providing, any health care service; and

17 (9) "Regulated health care entity" means any health care professional or health care
18 institution that is certified, authorized, or licensed by the Commonwealth of
19 Kentucky, or that receives any form of state funding or state insurance
20 reimbursement.

21 ➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO

22 READ AS FOLLOWS:

23 (1) A health care professional or health care institution shall have the right to refuse
24 to participate in any health care service which violates his, her, or its conscience.

25 (2) A health care professional or health care institution shall not be liable civilly,
26 criminally, or administratively for exercising his, her, or its right of conscience
27 with respect to a health care service.

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

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

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

13 (1) A health care professional 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 act or omission the health care
20 professional 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 in, or is about to assist or participate in any
24 proceeding related to a violation.

25 (2) Unless the disclosure is prohibited by law, a health care professional 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 health care services; or
- 4 (c) Gross mismanagement or waste of funds, abuse of authority, practices or
- 5 methods of treatment that may put patient or client health at risk, or a
- 6 substantial 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 Commonwealth and any of its agencies or political subdivisions, including
10 any hiring or licensing authority, shall not reprimand, sanction, deny, revoke, or
11 threaten to revoke a license, certification, or registration of, or otherwise
12 discriminate against, a health care professional for engaging in speech or
13 expressive activity that is protected by the First Amendment to the United States
14 Constitution, unless the Commonwealth, agency, or political subdivision
15 demonstrates that such action is the least restrictive means that is essential to
16 further a compelling government interest.

17 (2) (a) The relevant hiring or licensing authority shall provide a health care
18 professional notice of, and opportunity to respond to, any complaints it has
19 received if, after review of the complaint, the relevant hiring or licensing
20 authority concludes there is sufficient reason to conduct an investigation.

21 (b) The notice under paragraph (a) of this subsection shall be given to the
22 health care professional only, and shall be sent no later than twenty-five
23 (25) days after receipt of the complaint, or within the period as otherwise
24 required by statute or administrative regulation, whichever occurs first.

25 (c) The hiring or licensing authority shall pay the health care professional an
26 administrative penalty of fifty dollars (\$50) for every two (2) weeks the
27 complaint is not provided to the health care professional if the notice is

1 *provided more than twenty-five (25) days following the receipt of the*
2 *complaint.*

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

5 *(1) Any person injured by a violation of Sections 1 to 6 of this Act shall have a civil*
6 *cause of action in Circuit Court to:*

- 7 *(a) Enjoin further violations;*
- 8 *(b) Recover actual damages sustained;*
- 9 *(c) Recover the costs of the action, including reasonable attorney's fees; and*
- 10 *(d) Provide any other appropriate relief, which may include reinstatement of a*
11 *health care professional to his or her previous position, reinstatement of*
12 *board certification, or relicensure of a health care institution.*

13 *(2) An additional burden or expense on another health care professional, health care*
14 *institution, or health care payer arising from the exercise of the right of*
15 *conscience shall not be a defense to any violation of Sections 1 to 6 of this Act.*

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

20 ➔ Section 8. This Act may be cited as the Health Care Heroes Recruitment and
21 Retention Act.

22 ➔ Section 9. Whereas Kentucky has a health care professional work force
23 shortage and has a paramount interest in recruiting and retaining these professionals
24 through measures that protect their rights of conscience, an emergency is declared to
25 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
26 otherwise becoming a law.