

1 SENATE BILL NO. 245

2 INTRODUCED BY K. REGIER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROTECTIONS FOR MEDICAL PRACTITIONERS,
5 HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS OBJECTING TO PARTICIPATING IN
6 HEALTH CARE SERVICES BASED ON CONSCIENCE; PROVIDING REMEDIES; PROVIDING
7 PROTECTIONS FOR WHISTLEBLOWERS; AND PROVIDING AN APPLICABILITY DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6], unless the context
12 requires otherwise, the following definitions apply:

13 (1) (a) "Conscience" means the ethical, philosophical, moral, or religious beliefs or principles held by
14 a medical practitioner, health care institution, or health care payer.

15 (b) With respect to institutional or corporate persons, as opposed to individual persons, the term is
16 determined by reference to that entity or body's governing documents, including but not limited to published
17 religious, moral, ethical, or philosophical guidelines or directives, mission statements, constitutions, articles of
18 incorporation, bylaws, policies, or regulations.

19 (2) (a) "Discrimination" means an adverse action taken against, or a threat of adverse action
20 communicated to, a medical practitioner, health care institution, or health care payer as a result of the medical
21 practitioner, health care institution, or health care payer's refusal to participate in a health care service on the
22 basis of conscience, including but not limited to termination of employment, transfer from current position,
23 demotion from current position, adverse administrative action, reassignment to a different shift or job title,
24 increased administrative duties, denial of staff privileges, denial of board certification, loss of career specialty,
25 reduction of wages, benefits, or privileges, refusal to award a grant, contract, or other program, refusal to
26 provide residency training opportunities, denial, deprivation, or disqualification of licensure, withholding or
27 disqualifying from financial aid and other assistance, impediment of the creation or improvement of a health
28 care institution or payer, impediment of the acquisition or merger of a health care institution or payer, the threat

1 of any of the preceding actions, or any other penalty, disciplinary, or retaliatory action, whether executed or
2 threatened.

3 (b) The term does not include the negotiation or purchase of insurance by a nongovernment entity.

4 (3) (a) "Health care institution" means a public or private hospital, clinic, medical center, physician
5 organization, professional association, ambulatory surgical center, private physician's office, pharmacy, nursing
6 home, medical school, nursing school, medical training facility, or any other entity or location in which health
7 care services are performed.

8 (b) The term includes but is not limited to organizations, corporations, partnerships, associations,
9 agencies, networks, sole proprietorships, or joint ventures.

10 (4) "Health care payer" means an employer, health plan, health maintenance organization, insurance
11 company, management services organization, or another entity that pays for or arranges for payment for a
12 health care service, in whole or in part.

13 (5) "Health care service" means medical care provided to a patient at any time during the patient's
14 course of treatment, including but not limited to initial examination, testing, diagnosis, referral, dispensing or
15 administration of a drug, medication, or device, psychological therapy or counseling, research, prognosis,
16 therapy, record-making procedures, notes related to treatment, set up, or performance of a surgery or
17 procedure, or any other care or service performed or provided by a medical practitioner.

18 (6) (a) "Medical practitioner" means a person who is or may be asked to participate in a health care
19 service.

20 (b) The term includes but is not limited to doctors, nurse practitioners, physician assistants, nurses,
21 nurse aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing
22 home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students,
23 nursing school faculty and students, psychology and counseling faculty and students, medical researchers,
24 laboratory technicians, counselors, social workers, or any other person who facilitates or participates in a health
25 care service.

26 (7) "Participate in a health care service" means to provide, perform, assist with, facilitate, refer for,
27 counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing a
28 health care service.

1 (8) "Person" means one or more individuals, partnerships, associations, or corporations.

2

3 **NEW SECTION. Section 2. Right of conscience for health care institutions and health care**

4 **payers.** (1) No health care institution or health care payer may be required to participate in or pay for a health
5 care service that violates the health care institution or health care payer's conscience, including by permitting
6 the use of its facilities. An insurance company shall list any health care service that it may refuse to pay for on
7 the basis of conscience in the applicable policy.

8 (2) Refusal to participate in or pay for a health care service under this section may not give rise to
9 liability of the health care institution or health care payer for damages allegedly arising from the refusal or be
10 the basis for any discrimination, discipline, or other recriminatory action against the health care institution,
11 health care payer, or any personnel, agent, or governing board.

12 (3) Nothing in this section may be construed to relieve a health care institution of the requirement to
13 provide emergency medical treatment to all patients set forth in 42 U.S.C. 1395dd or any other federal law
14 governing emergency medical treatments.

15 (4) This section is supplemental to and may not be construed as modifying or limiting the rights and
16 remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

17

18 **NEW SECTION. Section 3. Right of conscience for medical practitioners.** (1) A medical

19 practitioner has the right to not participate in a health care service that violates the practitioner's conscience. A
20 health care institution may not be held liable for the exercise of conscience not to participate in a health care
21 service by a medical practitioner employed, contracted, or granted admitting privileges by the health care
22 institution.

23 (2) A health care institution may require the exercise of conscience as a basis for not participating in a
24 health care service to be made in writing and signed by the medical practitioner objecting. A writing made under
25 this subsection may refer only generally to the grounds of "conscience".

26 (3) A medical practitioner's refusal to participate in a health care service based on an exercise of
27 conscience may not be a consideration with respect to staff privileges of a health care institution or a basis for
28 discrimination, discipline, or other recriminatory action against the practitioner.

1 (4) A medical practitioner may not be held liable for damages allegedly arising from the exercise of
2 conscience not to participate in a health care service.

3 (5) This section is supplemental to and may not be construed as modifying or limiting the rights and
4 remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

5
6 **NEW SECTION. Section 4. Unlawful to interfere with right of conscience.** (1) It is unlawful to
7 interfere or attempt to interfere with the right not to participate in a health care service authorized by this part,
8 whether by duress, coercion, or any other means.

9 (2) A medical practitioner, health care institution, or health care payer injured by unlawful interference
10 with the right not to participate in a health care service is entitled to:

11 (a) injunctive relief, when appropriate, including but not limited to reinstatement of a medical
12 practitioner to the medical practitioner's previous position, reinstatement of board certification, and relicensure
13 of a health care institution or health care payer;

14 (b) monetary damages for injuries suffered; and

15 (c) reasonable costs and attorney fees.

16 (3) This section is supplemental to and may not be construed as modifying or limiting the rights and
17 remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

18
19 **NEW SECTION. Section 5. Exercise of conscience not grounds for loss of privileges,**
20 **immunities, or public benefits.** The exercise of conscience not to participate in a health care service by a
21 medical practitioner, health care institution, or health care payer may not be grounds for loss of any privileges
22 or immunities or for the loss of any public benefits. This section is supplemental to and may not be construed as
23 modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

24
25 **NEW SECTION. Section 6. Whistleblower protections.** (1) A medical practitioner or health care
26 institution may not be discriminated against because the medical practitioner or health care institution:

27 (a) provides, causes to be provided, or intends to provide or cause to be provided information relating
28 to a suspected violation of [sections 1 through 6] to the medical practitioner or health care institution's employer,

1 the attorney general, any agency charged with protecting health care rights of conscience, the United States
 2 department of health and human services, the United States office for civil rights, or any other federal agency
 3 charged with protecting health care rights of conscience;

4 (b) testifies or intends to testify in a proceeding concerning a violation of [sections 1 through 6]; or

5 (c) assists or participates, or intends to assist or participate, in a proceeding.

6 (2) Except as provided in subsection (3), it is unlawful to discriminate against a medical practitioner
 7 because the medical practitioner discloses information that the medical practitioner reasonably believes
 8 evinces:

9 (a) a violation of any law, rule, or regulation;

10 (b) a violation of any standard of care or ethical guidelines for the provision of any health care service;

11 or

12 (c) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific
 13 danger to public health or safety.

14 (3) Nothing in this section may be construed to exempt a person from the requirements of Title 50,
 15 chapter 16, the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., or
 16 any other applicable confidentiality and patient privacy requirements.

17
 18 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be
 19 codified as new part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through
 20 6]..

21
 22 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
 23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 24 the part remains in effect in all valid applications that are severable from the invalid applications.

25
 26 **NEW SECTION. Section 9. Applicability.** [This act] applies to insurance policies issued on or after
 27 [the effective date of this act].

28 - END -