**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “MEDICAL ETHICS AND DIVERSITY ACT”; BY ADDING CHAPTER 139 TO TITLE 44 SO AS TO SET FORTH FINDINGS OF THE GENERAL ASSEMBLY REGARDING THE RIGHT OF CONSCIENCE IN THE HEALTH CARE INDUSTRY; TO DEFINE CERTAIN TERMS; TO AUTHORIZE MEDICAL PRACTITIONERS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS NOT TO PARTICIPATE IN HEALTH CARE SERVICES THAT VIOLATE THE PRACTITIONER’S OR ENTITY’S CONSCIENCE AND TO PROTECT THESE INDIVIDUALS AND ENTITIES FROM CIVIL, CRIMINAL, OR ADMINISTRATIVE LIABILITY AND FROM DISCRIMINATION FOR EXERCISING THEIR PERSONAL RIGHT OF CONSCIENCE, WITH EXCEPTIONS; TO CREATE A PRIVATE RIGHT OF ACTION FOR MEDICAL PRACTITIONERS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS FOR VIOLATION OF THE CHAPTER; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be known and cited as the “Medical Ethics and Diversity Act”.

SECTION 2. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 139

Medical Ethics and Diversity Act

Section 44‑139‑10. (A) The General Assembly finds that the right of conscience is a fundamental and unalienable right. It was central to the founding of the United States, has been deeply rooted in our Nation’s history and tradition for centuries, and has been central to the practice of medicine, through the Hippocratic Oath, for millennia.

(B) Despite its preeminent importance, however, threats to the right of conscience of medical practitioners, health care institutions, and health care payers have become increasingly more common and severe in recent years. The swift pace of scientific advancement and the expansion of medical capabilities, along with the mistaken notion that medical practitioners, health care institutions, and health care payers are mere public utilities, promise only to make the current crisis worse, unless something is done to restore conscience to its rightful place.

(C) With this purpose in mind, the General Assembly declares that it is the public policy of the State of South Carolina to protect the right of conscience for medical practitioners, health care institutions, and health care payers.

(D) As the right of conscience is fundamental, no medical practitioner, health care institution, or health care payer should be compelled to participate in or pay for any medical procedure or prescribe or pay for any medication to which the practitioner or entity objects on the basis of conscience, whether such conscience is informed by religious, moral, ethical, or philosophical beliefs or principles.

(E) It is the purpose of this chapter to protect medical practitioners, health care institutions, and health care payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

Section 44‑139‑20. For the purposes of this chapter:

(1) ‘Conscience’ means the religious, moral, ethical, or philosophical beliefs or principles held by any medical practitioner, health care institution, or health care payer. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity or body’s governing documents including, but not limited to, any published religious, moral, ethical, or philosophical guidelines or directives; mission statements; constitutions; articles of incorporation; bylaws; policies; or regulations.

(2) ‘Disclosure’ means a formal or informal communication or transmission, but does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority unless the medical practitioner providing the disclosure or transmission reasonably believes that the disclosure or transmission evinces:

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

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

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

(3) ‘Discrimination’ means any adverse action taken against, or any threat of adverse action communicated to, any medical practitioner, health care institution, or health care payer as a result of the practitioner’s or entity’s decision to decline to participate in a health care service on the basis of conscience. Discrimination includes, but is not limited to, termination of employment; transfer from current position; demotion from current position; adverse administrative action; reassignment to a different shift or job title; increased administrative duties; refusal of staff privileges; refusal of board certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a grant, contract, or other program; refusal to provide residency training opportunities; denial, deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and other assistance; impediments to creating any health care institution or payer or expanding or improving said health care institution or payer; impediments to acquiring, associating with, or merging with any other health care institution or payer; the threat thereof with regard to any of the preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened.

(4) ‘Health care service” means medical care provided to any patient at any time over the entire course of treatment. This includes, but is not limited to, initial examination; testing; diagnosis; referral; dispensing and/or administering any drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; any other care or necessary services performed or provided by any medical practitioner including, but not limited to, allied health professionals, paraprofessionals, or employees of health care institutions.

(5) ‘Health care institution’ means any public or private hospital, clinic, medical center, physician organization, professional association, ambulatory surgical center, private physician’s office, pharmacy, nursing home, medical school, nursing school, medical training facility, or any other entity or location in which health care services are performed on behalf of any person. Health care institutions may include, but are not limited to, organizations, corporations, partnerships, associations, agencies, networks, sole proprietorships, joint ventures, or any other entity that provides health care services.

(6) ‘Health care payer’ means any employer, health plan, health maintenance organization, insurance company, management services organization, or any other entity that pays for, or arranges for the payment of, any health care service provided to any patient, whether that payment is made in whole or in part.

(7) ‘Medical practitioner’ means any person or individual who may be or is asked to participate in any way in any health care service. This includes, but is not limited to, doctors, nurse practitioners, physician’s assistants, nurses, nurses’ aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in the provision of health care services to any person.

(8) ‘Participate’ in a health care service means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing, any health care service or any form of such service.

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

Section 44‑139‑30. (A) A medical practitioner, health care institution, or health care payer has the right not to participate in or pay for any health care service which violates the practitioner’s or entity’s conscience.

(B) No medical practitioner, health care institution, or health care payer may be civilly, criminally, or administratively liable for exercising the practitioner’s or entity’s right of conscience with respect to a health care service. No health care institution may be civilly, criminally, or administratively liable for any claims related to or arising out of the exercise of conscience rights protected by this chapter by a medical practitioner employed, contracted, or granted admitting privileges by the health care institution.

(C) No medical practitioner, health care institution, or health care payer may be discriminated against in any manner as a result of the practitioner’s or entity’s decision to decline to participate in a health care service on the basis of conscience.

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

(E) Nothing in this chapter may be construed to override the requirement to provide emergency medical treatment to all patients as set forth in 42 U.S.C. Section 1395dd or any other federal law governing emergency medical treatments.

Section 44‑139‑40. (A) No medical practitioner may be discriminated against in any manner because the medical practitioner:

(1) provided, caused to be provided, or is about to provide or cause to be provided to the practitioner’s employer, the Attorney General of South Carolina, the Department of Health and Environmental Control, the South Carolina Board of Medical Examiners, any state agency charged with protecting health care rights of conscience, the U.S. Department of Health and Human Services Office of Civil Rights, or any other federal agency charged with protecting health care rights of conscience information relating to any violation of, or any act or omission the medical practitioner reasonably believes to be a violation of, any provision of this chapter;

(2) testified or is about to testify in a proceeding concerning such violation; or

(3) assisted or participated, or is about to assist or participate, in such a proceeding.

(B) Unless the disclosure is specifically prohibited by law, no medical practitioner may be discriminated against in any manner because the medical practitioner disclosed any information that the medical practitioner reasonably believes evinces:

(1) any violation of any law, rule, or regulation;

(2) any violation of any standard of care or other ethical guidelines for the provision of any health care service; or

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

Section 44‑139‑50. (A) A civil action for damages or injunctive relief, or both, may be brought by any medical practitioner, health care institution, or health care payer for any violation of any provision of this chapter. Any additional burden or expense on another medical practitioner, health care institution, or health care payer arising from the exercise of the right of conscience is not a defense to any violation of this chapter.

(B) Any party aggrieved by any violation of this chapter may commence a civil action and is entitled, upon the finding of a violation, to recover threefold the party’s actual damages sustained but in no case may recovery be less than five thousand dollars, along with the costs of the action and reasonable attorney’s fees. Such damages are cumulative and in no way limited by any other remedies which may be available under any other federal, state, or municipal law. A court considering such civil action also may award injunctive relief, which may include, but, is not limited to, reinstatement of a medical practitioner to his previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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