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HOUSE BILL NO. 8

Offered January 10, 2024

Prefiled December 1, 2023

A *BILL* to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, relating to the Medical Ethics Defense Act established.

Patron—Ware

Referred to Committee on Health and Human Services

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, as follows:

CHAPTER 21.**MEDICAL ETHICS DEFENSE ACT.****§ 32.1-376. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Conscience" means the ethical, moral, or religious 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's or body's governing documents, including any published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

"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 communication or transmission reasonably believes that the communication or transmission evinces:

1. Any violation of any law, rule, or regulation;
2. Any violation of any ethical guidelines for the provision of any medical procedure or service; or
3. Gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of treatment that may put patient health at risk, or a substantial and specific danger to public health or safety.

"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 such medical practitioner's, health care institution's, or health care payer's decision to decline to participate in a medical procedure or service on the basis of conscience. "Discrimination" includes termination of employment; transfer from current position; demotion from current position; adverse administrative action; reassignment to a different shift or job title; 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 of any of the preceding actions with regard to any of the preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened.

"Health care institution" means any organization, corporation, partnership, association, agency, network, sole proprietorship, joint venture, or other entity that provides medical procedures or services. "Health care institution" includes 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 other entity or location in which medical procedures or services are performed.

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

"Medical practitioner" means any person who may be or is asked to participate in any way in any medical procedure or service. "Medical practitioner" includes doctors, nurse practitioners, physician's assistants, nurses, nurse aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school

INTRODUCED

HB8

59 faculty and students, nursing school faculty and students, psychology and counseling faculty and
60 students, medical researchers, laboratory technicians, psychologists, psychiatrists, counselors, mental
61 health professionals, social workers, or any other person who facilitates or participates in the provision
62 of a medical procedure or service.

63 "Medical procedure or service" means medical care provided to any patient at any time over the
64 entire course of treatment, or medical research. "Medical procedure or service" includes testing,
65 diagnosis, referral, dispensing or administering any drug, medication, or device, psychological therapy
66 or counseling, research, prognosis, therapy, record making procedures, notes related to treatment, set up
67 or performance of a surgery or procedure, or any other care or services performed or provided by any
68 medical practitioner including physicians, nurses, allied health professionals, paraprofessionals,
69 contractors, or employees of health care institutions.

70 "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with
71 regard to, admit for the purposes of providing, or take part in any way in providing any medical
72 procedure or service, or any form of such service.

73 "Pay" or "payment" means to pay for, contract for, arrange for the payment of, whether in whole or
74 in part, reimburse, or remunerate.

75 **§ 32.1-377. Rights of conscience of medical practitioners, health care institutions, and health care**
76 **payers.**

77 A. A medical practitioner, health care institution, or health care payer has the right not to
78 participate in or pay for any medical procedure or service that violates such medical practitioner's,
79 health care institution's, or health care payer's conscience.

80 B. The exercise of the right of conscience is limited to conscience-based objections to a particular
81 medical procedure or service. This section may not be construed to waive or modify any duty a medical
82 practitioner, health care institution, or health care payer may have to provide other medical procedures
83 or services that do not violate such medical practitioner's, health care institution's, or health care
84 payer's conscience. Additionally, a health care payer may not decline to pay for a medical procedure or
85 service it is contractually obligated to pay for under the terms of its contract with an insured party.

86 C. No medical practitioner, health care institution, or health care payer shall be civilly, criminally,
87 or administratively liable for exercising such medical practitioner's, health care institution's, or health
88 care payer's right of conscience not to participate in or pay for a medical procedure or service. No
89 health care institution shall be civilly, criminally, or administratively liable for exercising the right of
90 conscience not to participate in a medical procedure or service by a medical practitioner employed,
91 contracted, or granted admitting privileges by the health care institution.

92 D. No medical practitioner, health care institution, or health care payer shall face discrimination in
93 any manner as a result of such medical practitioner's, health care institution's, or health care payer's
94 decision to decline to participate in or pay for a medical procedure or service on the basis of
95 conscience.

96 E. Notwithstanding any other provision of this chapter to the contrary, a religious medical
97 practitioner, health care institution, or health care payer that is held out to the public as religious,
98 states in governing documents a religious purpose or mission, and has internal operating policies or
99 procedures that implement religious beliefs, shall have the right to make employment, staffing,
100 contracting, and admitting privilege decisions consistent with religious beliefs.

101 F. Nothing in this chapter shall be construed to override the requirement to provide emergency
102 medical treatment to all patients as set forth in 42 U.S.C. § 1395dd.

103 **§ 32.1-378. Whistleblower protection.**

104 A. No medical practitioner shall face discrimination in any manner because the medical practitioner:

105 1. Provided, caused to be provided, or is about to provide or cause to be provided to his employer,
106 the Attorney General, the Department of Health Professions, the U.S. Department of Health and Human
107 Services Office for Civil Rights, or any other federal agency charged with protecting health care rights
108 of conscience information relating to any violation of, or any act or omission the medical practitioner
109 reasonably believes to be a violation of, any provision of this chapter;

110 2. Testified or is about to testify in a proceeding concerning such violation; or

111 3. Assisted or participated, or is about to assist or participate, in such a proceeding.

112 B. Unless the disclosure is specifically prohibited by law, no medical practitioner shall face
113 discrimination in any manner because the medical practitioner disclosed any information that the
114 medical practitioner reasonably believes evinces:

115 1. Any violation of any law, rule, or regulation;

116 2. Any violation of any ethical guidelines for the provision of any medical procedure or service; or

117 3. Gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of
118 treatment that may put patient health at risk, or a substantial and specific danger to public health or
119 safety.

120 **§ 32.1-379. Free speech protection.**

A. No agency, department, or board of the Commonwealth, including the Department of Health Professions, the Board of Medicine, or any other agency, department, or board regulating the practice of a medical procedure or service in the Commonwealth, shall reprimand, sanction, or deny or revoke, or threaten to revoke, a license, certification, or registration of a medical practitioner for engaging in speech or expressive activity that is protected by the First Amendment to the United States Constitution, unless such agency, department, or board demonstrates beyond a reasonable doubt that the medical practitioner's speech was the direct cause of physical harm to a person with whom the medical practitioner had a practitioner-patient relationship within the three years immediately preceding the incident of physical harm.

B. No agency, department, or board of the Commonwealth, including the Department of Health Professions, the Board of Medicine, or any other agency, department, or board regulating the practice of a medical procedure or service in the Commonwealth, shall contract with, nor shall it recognize, approve, or require an individual to obtain certifications or credentials issued or approved by, a specialty board or other recognizing agency that revokes the certification of, or refuses to issue certification to, an individual because the individual has engaged in speech or expressive activity that is protected by the First Amendment to the United States Constitution, provided that such individual was not providing medical advice or treatment to a specific patient.

C. No medical practitioner or student in training in the health professions in the Commonwealth shall be reprimanded, sanctioned, or threatened with loss of job, loss of job advancement, loss of student status, or any other form of discrimination for engaging in speech or expressive activity, refusing speech that is compelled, or any other form of action that is protected by the First Amendment to the United States Constitution.

D. Each agency of the Commonwealth, including the Department of Health Professions, the Board of Medicine, or any other agency, department, or board regulating the practice of a medical procedure or service in the Commonwealth, and any specialty board or other recognizing agency approved or recognized by any agency of the Commonwealth, shall provide a medical practitioner with any complaint it has received that may result in the revocation of the medical practitioner's license, certification, or registration within 21 days after receipt of such complaint. Such agency of the Commonwealth must pay the medical practitioner an administrative penalty of \$500 for each day such complaint is not provided to the medical practitioner after the specified 21 days.

§ 32.1-380. Civil remedies.

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 shall not be a defense to any violation of this chapter. However, no civil action may be brought against an individual who declines to use or purchase any medical procedure or service from a specific medical practitioner, health care institution, or health care payer for exercising the rights granted in § 32.1-379.

B. Any party aggrieved by any violation of this chapter may commence a civil action and shall be entitled, upon the finding of a violation, to recover threefold such party's actual damages sustained, along with the costs of the action and reasonable attorney fees. Such damages shall be cumulative and in no way limited by any other remedies that may be available under any other federal, state, or local law. A court considering such civil action may also award injunctive relief, which may include reinstatement of a medical practitioner to his previous position, reinstatement of a medical practitioner's board certification, and re-licensure of a health care institution or health care payer.