

HCS HB 1541 -- CONSCIENCE RIGHTS OF MEDICAL SERVICE PROVIDERS

SPONSOR: Sater (Jones, 89)

COMMITTEE ACTION: Voted "do pass" by the Committee on Health Care Policy by a vote of 8 to 3.

This substitute specifies that any medical professional, including an individual who may be asked to participate in any way in a medical service, or health care institution where medical services are provided, has the right not to participate in and cannot be required to participate in a medical service, including any phase of patient medical care, treatment, or procedure that violates his or her conscience including his or her religious, moral, or ethical principles that are adherent to a sincere and meaningful belief in God or in relation to a supreme being.

No medical professional or health care institution can be civilly, criminally, or administratively liable for declining to participate, provide or perform any specified medical procedure or research that violates his or her conscience.

No medical professional or health care institution can be discriminated against in any manner for declining to participate, provide or perform any specified medical procedure or research including, but not limited to, declining to counsel, advise, pay for, provide, perform, assist, participate, provide or perform any specified medical procedure or research that violates his or her conscience.

It will be unlawful for any person, the state, a political subdivision, a public or private institution, or a public official to discriminate against any medical institution or any person, association, corporation, or other entity attempting to establish a new or operating an existing health care institution in any manner because it declines to participate, provide or perform any specified medical procedure or research which violates the institution's conscience. It will be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against a person or entity attempting to establish a new or operating an existing health care institution because it declines to participate, provide or perform any specified medical procedure or research contrary to its conscience. The provisions of the substitute do not authorize a health care professional or institution to withhold lifesaving emergency medical treatment or services or to alleviate a duty to inform a patient of his or her condition, risks, prognosis, and available options and resources. A cause

of action for damages or injunctive relief, or both, may be brought for a violation of these provisions. It cannot be a defense to any claim that the violation was necessary to prevent additional burden or expense on any other medical professional, health care institution, individual, or patient.

A cause of action for damages or injunctive relief, or both, can be a discriminatory violation of a medical professional or health care institution's conscience rights. A defense to any discrimination claim that the violation was necessary to prevent additional burden or expense on any other medical professional, health care institution, individual or patient is prohibited. The aggrieved party must be entitled to recover threefold the actual damages, including pain and suffering, the costs of the action, and reasonable attorney fees. Recovery cannot be less than \$5,000 for each violation in addition to the costs of the action and reasonable attorney fees.

The General Assembly can, by concurrent resolution, appoint one or more of its members who sponsored or co-sponsored this legislation in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

The substitute contains a severability clause and if any part of these provisions is declared invalid, it is the intent of the General Assembly that the remaining provisions will remain in force and effect.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill is a timely conscience protection bill because of recent bills regarding employment and employment discrimination. The bill helps to protect those in the medical industry from having to participate in a medical act that violates their medical conscience which is a violation of their civil liberty. This would include abortion and stem cell related health services. Two other states have laws to protect all health care professionals, 45 protect civil rights of certain individuals referring to abortion related services, and three provide no protection for any professional. The bill will not reduce access to health care services because of the vast workforce already available that would be able to provide these services without a fear of violating their conscience rights. The bill addresses employees who object to certain medical services and are being told that they will be fired if they do not comply with an employer's requirement to perform a medical service. The bill helps to restore the rights that were set in place by President Bush and later rescinded by President Obama.

Testifying for the bill were Representative Jones (89), Missouri Family Policy Council; Campaign Life Missouri; Missouri Baptist Convention, Christian Life Commission; Americans United for Life; and Concerned Women for America of Missouri.

OPPONENTS: Those who oppose the bill say that our country has a long history of protecting the rights of individuals but legislating a right to not comply is not one of those liberties. The bill allows a person who opposes the removal of life support to not have to comply with an individual's request. The value system that health care professionals live by includes putting themselves at risk, being tolerant of health choices of others even though he or she might disagree with the choice made that preempted the reason for needing care. Medicine is practiced for the betterment of the human being and anyone that doesn't accept that value should not get into the profession and legislators should not attempt to legislate any values of the medical profession. Medicine is more complicated than just an immediate injury and anyone's conscience may not take into account all of the factors, meaning more than what presents itself on face value. The first and foremost duty is to care for the patient. The bill opens up institutions to severe and great liability. A physician must be professional enough to provide all appropriate information and care given the needs of the client instead of withholding information or care due to the physician's moral belief. The bill is not appropriate and far overreaches the oath of all medical providers. The bill overtly violates the legal responsibility to disclose and it shouldn't enable this type of unethical behavior. The current law is held up under the constitution. It would be great to have a corporation to be required to have a conscience. Missouri already does have conscience protections for private entities but the bill has no restrictions and makes no distinctions that are necessary. The merger provision in the bill allows the current religious exclusions to apply to those acquired institutions. Thus, there would be a reduction in services. The church amendment form 1973 says that all persons can withdraw from performing an abortion except in cases of emergency. The bill allows a health care provider to refuse any predetermined wishes of a patient. The bill is a dangerous and unconstitutional over reach on civil liberties and violates the Missouri Human Rights Act and numerous ethical violations of the medical profession. The rights of employers and employees are addressed in the bill, but the medical needs of the patient should always outweigh the rights of an employer and employees. Violations of this are unconscionable.

Testifying against the bill were Dr. Ira Kudner; Dr. Ed Weisbart; Naral Pro-Choice Missouri; Crystal Williams, ACLU of Eastern

Missouri; Rev. Rebecca Turner; and Planned Parenthood Affiliates in Missouri.

OTHERS: Others testifying on the bill say that secular values should not be imposed on religious persons who are also health care professionals. They support the intent but have concerns about the bill because a doctor could make medical decisions regarding the hydration and nutrition of a patient who does or does not want to remain on life support if the doctor feels it violates his or her conscience. This might allow an abortionist to circumvent any abortion consent laws.

Testifying on the bill were Joanne Schrader; Dylan Schrader; and Patty Skain.