

# IDAHO PROVIDER CONSCIENCE / WHISTLEBLOWER STATUTE



Kim C. Stanger

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# Medical Ethics Defense Act

- Idaho Code 54-1301 et seq.
  - 1303: Definitions
  - 1304: Conscience Protections
  - 1305: Whistleblowers Protection
  - 1306: Free Speech Protection
  - 1307: Civil Remedies
- Effective 3/19/25



**Broader than just  
conscience objections**

# Resources

- Idaho Code 54-1301 et seq.
  - <https://legislature.idaho.gov/wp-content/uploads/statutesrules/idstat/Title54/T54CH13.pdf>.
- Stanger, *Idaho's New Healthcare Whistleblower Law*,
  - <https://www.hollandhart.com/idahos-new-healthcare-whistleblower-law>
- If you have questions, submit them—
  - Using chat feature, or
  - Email me at [kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com)

# WHY YOU SHOULD CARE



# Medical Ethics Defense Act: Private Cause of Action

- Health care provider may sue for a violation of the Act and recover:
  - Injunctive relief (e.g., reinstatement, board certification, licensure, etc.);
  - Actual damages for injuries suffered; and
  - Reasonable costs and attorneys' fees.

(IC 54-1307)

- *Much broader than existing law.*

# CONSCIENCE PROTECTIONS



# Preexisting Conscience Laws: Federal

## Conscience and Religious Freedom

[Conscience and Religious  
Freedom Protections](#)

[Filing a Complaint](#)

[Newsroom](#)

[HHS](#) > [Conscience and Religious Freedom Home](#) > [Your Protections Against Discrimination Based on Conscience and Religion](#)

**Conscience and Religious  
Freedom** —

**Conscience and Religious  
Freedom Protections**

[Filing a Complaint](#) +

[Newsroom](#)

[Office for Civil Rights Speaker  
Request](#)

## Your Protections Against Discrimination Based on Conscience and Religion

Federal conscience  
objections, e.g.,

- 45 CFR part 88
- Affordable Care Act § 1553
- Church Amendments  
(abortion and sterilization)
- Coates-Snowe  
Amendment (abortion  
training)
- Others

# Preexisting Conscience Laws: Idaho

- General
  - A provider who for ethical or professional reasons is unwilling to conform to the desires of the patient or the patient’s surrogate decision-maker may withdraw from rendering care if:
    - They first make a good faith effort to assist the patient in obtaining the services of another provider who is willing to provide the care requested by the patient; and
    - Must still provide life-sustaining or comfort care if requested by patient or patient’s surrogate unless it would be nonbeneficial care.  
(IC 39-4513(2) and -4514(3))
- Abortions, abortifacients, emergency contraceptives, and stem cell research or cloning, or end of life care. (IC 18-611(2), -612).
- POSTs. (IC 18-611(6))

# Medical Ethics Defense Act: Conscience Protection

- Health care providers cannot be required to participate in or pay for a medical procedure, treatment, or service that violates such health care provider's conscience.  
(IC 54-1304(1))
  - “**Health care provider**” = any person, institution or payer who is authorized to participate in any way in any medical procedure, treatment, or service, *e.g.*, doctors; nurses; aides; APPs; AHPs; MAs; techs; psychologists; counselors; social workers; pharmacists; faculty or students; employees of hospital, clinic, nursing home or pharmacy; health institution; health care payer; *etc.*
  - “**Conscience**” = means the ethical, moral, or religious beliefs or principles sincerely held by any health care provider.

(IC 54-1303)

# Conscience Protection: Discrimination

- Cannot discriminate against a health care provider for exercising right of conscience.  
(IC 54-1304(6))
  - "**Discriminate**" = any adverse action taken against, or any threat of adverse action communicated to, any health care provider as a result of exercising conscience rights, including but not limited to any penalty or disciplinary or retaliatory action, whether executed or threatened.
  - "Discriminate" ≠ negotiation or purchase of, or the refusal to use or purchase, insurance or medical procedures, treatments, or services by an individual or nongovernmental entity, nor does it include good faith efforts to reasonably accommodate conscientious objections of a health care provider.

(IC 54-1303)

# Medical Ethics Defense Act: Disclosure to Employer

- A health care professional shall communicate to the health care professional's employer a conscience-based objection when it occurs or as soon as reasonably possible to allow an employer to make necessary staffing adjustments without delaying the provision of health care services.
- Employers may require an employee to disclose the employee's conscience-based objections at the time of hiring, but such disclosure shall not limit the rights protected by this chapter.

- Employer may require employee to provide conscience-based objections in writing.

(IC 54-1304(3)-(4))

- *But should you ask?*

# Medical Ethics Defense Act: Immunity

- No health care provider shall be civilly, criminally, or administratively liable for exercising the right of conscience.
- No health care institution shall be civilly, criminally, or administratively liable for the exercise of the right of conscience by a health care professional employed, contracted, or granted admitting privileges by the health care institution.

(IC 54-1304(3))

# WHISTLEBLOWER PROTECTIONS



# Preexisting Whistleblower Laws

- Federal Whistleblower Protection Act, 5 USC §§ 1213-1219, -2302,
  - Protects federal employees who report govt waste, fraud, abuse or violations of the laws or regulations.
- Idaho Govt Whistleblower Statute, IC § 6-2104.
  - Protects Idaho govt employees who report waste of public resources or violation of the law.
- Wrongful discharge tort claim
  - Generally prohibits discharge that violates clear mandate of public policy, e.g., statute or regulation.
  - Construed narrowly.

# Medical Ethics Defense Act: Whistleblowers

- Cannot discriminate in any manner against a health care provider because the provider:
  - Provides info regarding any act or omission that the provider reasonably believes to be a violation of the Act to the provider’s employer, the Idaho Attorney General, a state agency charged with protecting the right of conscience, OCR, or other federal agency charged with protecting the right of conscience; or
  - Testifies or assists in a proceeding concerning a violation of the Act;
  - **Discloses info the provider reasonably believes evidences:**
    - Any violation of any law, rule, or regulation;
    - Any violation of any ethical guidelines for any medical care; or
    - Gross mismanagement, abuse of authority, practices that may put patients at risk, or endangers public health or safety.

**Broader than  
“conscience”  
objections**

(IC 54-1305)

# Medical Ethics Defense Act: Whistleblowers

- Elements:
  1. Healthcare provider disclosed info the provider reasonably believes evinces:
    - Violation of law, rule or regulation; or
    - Violation of ethical guidelines re medical service; or
    - Gross mismanagement, gross waste, abuse of authority, or practices that put patient at risk or endanger public health.
  2. Discrimination against the healthcare provider by anyone in a position to take adverse action against the provider, e.g., employer, hospital, payer, network, others?
  3. Causation, i.e., action taken “because” the healthcare provider disclosed the info.

# Medical Ethics Defense Act: Defenses

- No whistleblower claim if:
  - Disclosure is specifically prohibited by law; or
  - Disclosure concerns the lawful exercise of discretionary decision-making authority unless **the healthcare provider** reasonably believes that the disclosure evinces a violation of the misconduct prohibited by the section, i.e., violation of law, ethical standards, gross mismanagement, abuse of authority, safety.

*Apparently depends on the belief of the plaintiff provider!*

(IC 54-1305(2), (3))

- See also general defenses discussed below.

# FREE SPEECH PROTECTIONS



# Medical Ethics Defense Act: Free Speech Protections

- DHW, Board of Medicine, or any other department or board regulating the practice of a medical procedure, treatment, or service in the state may not reprimand, sanction, or threaten a health care provider for engaging in speech, expression, or association that is protected from govt interference by the First Amendment...
- Unless the department or board demonstrates by clear and convincing evidence that the health care provider's speech, expression, or association was the direct cause of physical harm to a person with whom the health care provider had a practitioner-patient relationship within the three (3) years immediately preceding the incident of physical harm.

(IC 54-1306)

- Only applies to govt agencies.

# Free Speech Complaints

- If agency receives a complaint that (i) is based on speech, expression or association protected by the First Amendment, and (ii) may result in revocation of the provider's license, then agency must provide the complaint to the provider within 21 days after receipt.
- If agency fails to do so, it must pay provider \$500 per day that the complaint is not provided after the 21-day period.

(IC 54-1306)

# EXCEPTIONS OR DEFENSES



# Medical Ethics Defense Act: Exceptions

- The Medical Ethics Defense Act does not apply to or affect:
  - Health care provider's duty to comply with the community standard of care.
  - Requirements under EMTALA.
  - Broader conscience rights provided in IC 18-611 or -612, i.e., abortions, abortifacients, emergency contraceptives, and stem cell research or cloning, or end of life care.
  - Religious health care providers' employment, staffing, contracting, administrative, and admitting privilege decisions consistent with such health care provider's religious beliefs if (i) such health care provider holds itself out to the public as religious and (ii) has internal operating policies or procedures that implement its religious purpose or mission.

# Medical Ethics Defense Act: Exceptions

- The Medical Ethics Defense Act does not apply to or affect:
  - Employer's right to take action if (i) an employee is unable to perform any essential function, (ii) the employer cannot transfer the employee to a suitable alternative position for which the employee is qualified, and (iii) the employer is otherwise unable to reasonably accommodate the employee without imposing an undue hardship on the employer.

(IC 54-1304(11)-(12))

- "**Essential functions**" means the fundamental job duties of an employment position, e.g., the position exists specifically to perform that function, there are a limited number of other employees who could perform the function, or the function is specialized and the individual is hired based on his ability to perform the function.

(IC 54-1303(3))

# TAKE AWAYS



# Problems

- Adverse affect on patients and other staff
- Relation to federal statutes:
  - EMTALA
  - Anti-discrimination statutes, e.g., race, color, religion, sex, national origin, age, disability, etc.
  - Contractual obligations
  - Standard of care
  - Informed consent
  - Others?

# To Do

- Beware anytime you are considering adverse action against a healthcare provider, including but not limited to—
  - Employment
  - Contracts
  - Credentialing and privileges
  - Other?
- Educate key stakeholders about new law and requirements, e.g.,
  - Administration, department leaders, management
  - Human Resources
  - Medical Staff leadership
  - Medical Staff Services
  - Legal
  - Others?

# To Do

- Consider implementation, e.g.,
  - Should you ask for conscience objections as part of employment or credentialing process? There are pros and cons...
  - Responding to conscience situation
- Update policies and practices
  - Exercise of conscience
  - Non-retaliation
  - Employment
  - Credentialing and privileging
  - Other?
- Monitor developments

# Questions?



Kim C. Stanger

Office: (208) 383-3913

[kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com)