

## **SB 1439 – END OF LIFE HEALTH CARE PROVIDER RIGHTS OF CONSCIENCE**

### **EXECUTIVE SUMMARY**

Arizona law protects health care providers from violating their consciences in certain contexts (e.g., abortion). SB 1439 builds on those protections by shielding health care providers from discrimination for declining to provide health care items or services that may cause or assist in causing a patient's death.

### **BACKGROUND**

Our nation and state have a rich heritage of religious freedom. The Arizona Constitution specifically protects each citizen's liberty of conscience. Since the 1973 *Roe v. Wade* Supreme Court decision, Arizona law has protected healthcare providers from being forced to provide abortions in violation of their consciences. Over the years, the Legislature has enhanced those protections and added others, including protecting healthcare providers from civil and criminal liability for declining to follow an advanced directive or the decisions of a surrogate decision maker, Ariz. Rev. Stat. § 36-3205(C), and protecting licensed professionals from having their licenses suspended, revoked, or denied because they act according to their religious beliefs, Ariz. Rev. Stat. § 41-1493.04.

Still, there remains work to be done to ensure all healthcare providers are protected from discrimination based on the exercise of their rights of conscience. SB 1439 builds on Arizona's strong foundation of esteem for liberty of conscience by ensuring that health care entities – both individuals and institutions – are shielded from discrimination for declining to provide health care items or services that may cause or assist in causing a patient's death.

SB 1439 defines discrimination in detail to ensure that health care entities are not retaliated against or punished in less overt ways for exercising their conscience rights, such as an employee being assigned to an unfavorable shift or a medical resident losing the opportunity for training and advancement.

Even the Affordable Care Act recognized the importance of protecting the rights of conscience of healthcare professionals in this end-of-life context.<sup>1</sup> The federal law is not enough, however. The looming potential repeal of the Affordable Care Act leaves uncertainty about whether the federal law will remain. More importantly, state laws are easier to enforce than federal laws because regulation of the health professions is within the direct powers of the states, as opposed to more attenuated federal jurisdiction over only those entities that receive federal funds.

Tracking the language of the federal law, SB 1439 uses “assisted suicide, euthanasia, or mercy killing” as examples of activities that a health care entity may decline to participate in. These activities are currently illegal in Arizona, and this bill does nothing to change that. In fact, the bill specifically contains a construction section that denounces any creation or recognition of a right to assisted suicide, euthanasia, or mercy killing.

Rather, SB 1439 protects health care providers who believe it would be wrong to provide *any* item or service that could cause or assist in causing a patient's death. The language is written to protect the autonomy and individual convictions of each health care provider.



Importantly, the bill does not apply to the withholding of cardiopulmonary resuscitation for a patient with a valid prehospital medical directive or a similar medical order issued by a licensed health care provider.

SB 1439 creates a civil cause of action for health care entities who are subject to discrimination for declining to provide health care services to cause or assist in causing death so that they can bring a lawsuit if necessary to enforce their rights. The case of nurse Cathy DeCarlo who was forced to participate in an abortion at Mt. Sinai Hospital in New York City demonstrates the need for this private right of action. Even though Ms. DeCarlo's rights established by federal statutes were clearly violated, there was no specific cause of action, and her claims were dismissed by the courts. SB 1439 will prevent such an inexcusable outcome for providers who face discrimination in the end-of-life context.

## TALKING POINTS

- **Health care providers are not vending machines.** Doctors and nurses are expected to exercise their professional judgment in treating patients, and guarding the autonomy of health care professionals in following their consciences is a critical part of maintaining the integrity of the entire medical profession. Since 1992, health care providers in Arizona have been able to decline to follow an advanced directive or the decisions of a surrogate decision maker if it violates their conscience.
- **No one should have to choose between their profession and their religious beliefs.** Health care professionals are tasked with weighty decisions. One decision they should never have to make is whether to abandon their judgment, moral code or religious beliefs to save their job.
- **This is not groundbreaking.** There are similar laws on the books – both federal and state – with no widespread fallout. Plenty of health care professionals have no objection to end-of-life options – but some do – and we should honor that.

## CONCLUSION

SB 1439 protects health care providers from discrimination for following their consciences in end-of-life care. This is an important and necessary safeguard for both religious freedom and the integrity of the medical profession.

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<sup>i</sup> See 42 U.S.C. § 18113.