

HOUSE BILL NO. 437

INTRODUCED BY E. STAFMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR DISMISSAL OF A COMPLAINT, INFORMATION, OR INDICTMENT AGAINST A HEALTH CARE PROVIDER WHEN THE STATE FAILS TO SHOW THAT THE CONDUCT ON WHICH THE COMPLAINT WAS BASED WAS KNOWINGLY AND PURPOSELY COMMITTED AND THAT THE CONDUCT WAS OUTSIDE THE ACCEPTED STANDARDS OF CARE FOR THAT HEALTH CARE PROVIDER; AND PROVIDING THAT THE DISMISSAL APPLIES TO CRIMINAL COMPLAINTS, INFORMATION, AND INDICTMENTS."

WHEREAS, the eighth principle of the American Medical Association's Principles of Medical Ethics states, "A physician shall, while caring for a patient, regard responsibility to the patient as paramount"; and

WHEREAS, on average, physicians spend 50.7 months of their 40-year careers with open or unresolved court claims that add stress, work, reputational damage, and loss of time caring for patients to physicians already overburdened with large patient loads, and many claims rest on the difference between negligence and appropriate care; and

WHEREAS, practicing physicians are leaving states that have conflicts between state law and the standard of care within specialties, such as obstetrics; and

WHEREAS, medical residents are choosing to receive their specialized medical training in states with less restrictive laws related to the practice of medicine; and

WHEREAS, Montana competes against other states for the employment of medical professionals, and the state faces a health care provider shortage; and

WHEREAS, the Montana Department of Public Health and Human Services designated 51 of 56 counties in 2022 as health professional shortage areas, and the March of Dimes stated that 50% of Montana counties qualified as maternity care deserts in its 2023 report; and

WHEREAS, medical care is driven by the scientific method, which aims to continuously reexamine the best course of treatment, and thus medical care, by definition, will change over time; and

WHEREAS, the standards of care provided to patients will change over time because a standard of

care is based on what a similarly qualified, reasonable medical professional would do in the same circumstances in a similar timeframe; and

WHEREAS, those physicians who follow their medical judgment and the latest scientific evidence are able to offer new therapeutic options with off-label use of medications when standard treatment regimens are nonexistent or when standard treatment regimens fail.

THEREFORE, the Legislature enacts this act to provide important protections for health care providers and to address health care workforce shortages in Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Dismissal of criminal charges against health care provider. (1) A health care provider, as defined in 50-16-504, may move to dismiss a criminal complaint, information, or indictment against the provider that is based on the provider's conduct in providing health care, including but not limited to off-label use of medications when medically appropriate and evidence based, in the ordinary course of business or practice of the provider's profession.

(2) The court shall hold a hearing on the motion as quickly as is reasonably practicable. At the hearing, the state shall prove by a preponderance of the evidence that the conduct on which the criminal complaint, information, or indictment is based was:

- (a) knowingly or purposely committed and not merely negligent; and
- (b) outside the accepted standards of care for the health care provider.

(3) If the state does not meet its burden under subsection (2), the court shall dismiss the criminal complaint, information, or indictment against the health care provider.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 13, part 4, and the provisions of Title 46, chapter 13, part 4, apply to [section 1].

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