

Tennessee Medical Ethics Defense Act: Provider Factsheet

What is the Tennessee Medical Ethics Defense Act?

- This law protects healthcare providers from participating in or paying for a healthcare procedure, treatment, or service that violates their conscience. Tenn. Code Ann. § 63-1-903(a)(1). If they refuse, they cannot be civilly or criminally liable, nor may their employer either discipline or threaten to discipline them. Tenn. Code Ann. § 63-1-903(b).



Who is a healthcare provider, or, in other words, who does it apply to? What does it mean to participate in providing healthcare?

- A healthcare provider means anyone who participates, in any way, in a healthcare procedure, treatment, or service. “Participate” is defined broadly: to participate in a healthcare procedure, treatment, or service means “to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing any healthcare procedure, treatment, or service.” This means not only doctors, nurses, pharmacists, and clinical psychiatrists, but also private EMT drivers, receptionists, orderlies, janitors and valets—anyone who is even slightly involved in providing healthcare services, no special training is required. Tenn. Code Ann. § 63-1-902(7-9).

What does conscience mean?

- Conscience means a sincerely held ethical, moral, or religious belief. Tenn. Code Ann. § 63-1-902 (1)(A).

Can this be used to discriminate against someone based on their race, color, sex, age, national origin, religion, or disability?

- No. Discrimination based on these characteristics might be a violation of civil rights laws. If you think a provider is unlawfully discriminating against someone based on their race, color, sex, age, national origin, or disability, inform them that they can file a civil rights complaint on the U.S. Department of Health and Human Services website. 42 U.S.C.A. § 18116 (West).

What does a “sincerely held ethical, moral, or religious belief” mean for a healthcare provider?

- Tennessee’s law does not define these terms. When courts have examined what it means to sincerely hold a religious belief in the past with respect to conscientious objections to other activities, they have been reluctant to inquire too deeply into the person’s worldview: courts feel as though they can tell when someone genuinely holds a belief.

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How is “conscience” determined for a hospital, other institutional entity, or corporate body?

- Conscience is determined by reference to that entity’s or body’s governing documents, including ethical, moral, or religious guidelines, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations. Tenn. Code Ann. § 63-1-902(1)(B). For example, a religious hospital likely has specific statements or bylaws where they state objections to certain procedures.

Does this mean a healthcare provider can perform a procedure on someone without their consent?

- No. To perform a procedure on someone without their informed consent, outside of a few extreme circumstances, is a crime. The conscience law states that a healthcare professional cannot perform a positive act; they can only refrain. Tenn. Code Ann. § 63-1-903(a)(1).

I heard about the woman in east Tennessee who claimed she was denied care because she wasn’t married. Is that allowed under this bill?

- This is unclear. The people who wrote the bill intended for healthcare professionals to have the ability to object to certain procedures because the *procedure*, not the person or the person’s lifestyle, implicated their conscience. However, the bill does not make this distinction between a *procedure itself* and a *procedure as administered to a particular person*.

What kind of care CAN be refused?

- It seems that as it is written, any objection that is grounded in a sincerely held ethical, moral, or religious belief is permissible under this law. This means that hotly-debated healthcare issues like abortion, gender affirming care, and certain types of end-of-life care can be refused. Here are some examples where a healthcare provider could likely legally refuse to provide care:
 - (1) A transgender man is refused their hormonal supplement by a pharmacist, who cites a religious objection. This is likely allowed under Tennessee’s law.
 - (2) A terminally-ill, elderly patient is denied the drugs that would allow them to end their life prematurely. This is likely allowed under Tennessee’s law.
 - (3) An unmarried teenage woman, with her parents’ consent, seeks to have an IUD implanted for birth control. Their healthcare provider, citing a religious objection to pre-marital sex, denies their request. This is likely allowed under Tennessee’s law.

Could this be used to deny a patient medication?

- Yes, if the physician or pharmacist has a sincere ethical, moral, or religious objection to doing so. Tenn. Code Ann. § 63-1-902(6)(B).

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What are safe zones—kinds of care that a hospital CAN'T refuse?

- A hospital, if they have an ER, must receive a patient and treat them appropriately or refer them to a hospital that can. This includes if they are in labor. 42 U.S.C. § 1395dd. This law, referred to as EMTALA, obligates a hospital, not a particular physician. Care also cannot be refused to anyone who is in imminent danger of harming themselves or others. Tenn. Code Ann. § 63-1-903 (West). Furthermore, a hospital cannot renege on a contract to which they had previously agreed with an insurance company or a patient. Here are some examples where the hospital would likely legally have to provide care, even if a healthcare provider or institution had a conscientious objection:
 - (1) A person who uses drugs is admitted to the emergency room for a broken arm. They cannot be refused care by the hospital even if the attending physician has a strong religious opposition to the person's lifestyle.
 - (2) A woman in labor is brought to the hospital. She cannot be refused care by the hospital.
 - (3) A cancer patient, through their insurance company, has contracted with a hospital to receive blood infusions. While receiving blood infusions, they tell a nurse they are gay. The hospital is still required to provide the contracted-for services.

What if a patient needs an emergency abortion? Can a physician refuse that?

- Likely so, though it is unclear. Emergency abortions are permissible in Tennessee under particular circumstances. The physician must determine that it is necessary to prevent the death of the pregnant woman or to prevent a "serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman." Tenn. Code Ann. § 39-15-213 (West). However, a physician may still believe that abortions are impermissible under any circumstances. It appears, though it is not certain, that the conscience law would protect their refusal. This question was considered before the Tennessee legislature, and a proponent of the bill suggested that a physician could refuse in this instance because other physicians may be willing to do so.

Does this mean I can perform a procedure prohibited by law in Tennessee, like gender affirming care for minors, because it goes against my conscience to refrain from doing so? Will the conscience law protect me?

- No. A healthcare professional cannot perform a positive act; they can only refrain. For example, the conscience law in Tennessee would not protect a medical provider who assisted a terminally-ill patient in ending their life prematurely or provided gender affirming care to minors, even if the patient wanted to do so and the physician believed it was their moral duty to assist their doing so.

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