

AN ACT

RELATING TO EMPLOYMENT; ENCOURAGING REPORTING OF SUSPECTED  
IMPROPER QUALITY OF PATIENT CARE; PROHIBITING EMPLOYER  
RETALIATORY ACTION IN CERTAIN CIRCUMSTANCES; PROVIDING  
GRIEVANCE PROCEDURES AND PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Conscientious Health Care Employee Protection Act".

Section 2. PURPOSE.--It is the purpose of the  
Conscientious Health Care Employee Protection Act to maintain  
and improve a high level of health care throughout New Mexico  
by encouraging health care professionals to notify  
appropriate public bodies of suspected improper quality of  
patient care. This reporting is encouraged in order to  
protect patients and employees and to assist public bodies  
charged with ensuring that health care is safe and adequate.

Section 3. DEFINITIONS.--As used in the Conscientious  
Health Care Employee Protection Act:

A. "commission" means the human rights commission  
established by Section 28-1-3 NMSA 1978;

B. "director" means the director of the division;

C. "division" means the human rights division of  
the labor department;

D. "employee" means a health care professional who performs services for and under the control and direction of an employer for wages or other remuneration;

E. "employer" means a person who has four or more employees and includes an agent of an employer and a public employer;

F. "health care professional" means a person licensed pursuant to Chapter 61, Articles 2, 3, 4, 5A, 6, 7A, 8, 9, 9A, 10, 10A, 11, 12, 12A, 12B, 12C, 13, 14A, 14B, 14C, 14D, 14E and 31 NMSA 1978;

G. "improper quality of patient care" means any practice, procedure, action or failure to act on the part of an employer that violates any law, practice act or rule;

H. "public body" means any state government department, agency or political subdivision;

I. "retaliatory action" means the discharge, suspension, demotion, disciplining or any discriminatory or adverse employment action against an employee in the terms and conditions of employment; and

J. "secretary" means the secretary of labor.

Section 4. EMPLOYER RETALIATORY ACTION PROHIBITED.--An employer shall not take any retaliatory action against an employee because the employee does any of the following:

A. discloses, or threatens to disclose, to an employer or to a public body an activity, policy or practice

of the employer that constitutes improper quality of patient care;

B. provides information to, or testifies before, any public body as part of an investigation, hearing or inquiry into improper quality of patient care, a violation of law, or a rule promulgated pursuant to law; or

C. objects to or refuses to participate in an activity, policy or practice that:

(1) is in violation of a law, or a rule promulgated pursuant to law, or constitutes improper quality of patient care; or

(2) is fraudulent or, criminal.

Section 5. GRIEVANCE PROCEDURE.--

A. An employee claiming to be subject to a retaliatory action prohibited by the Conscientious Health Care Employee Protection Act, after he has exhausted all other administrative grievance procedures, may file with the division a written complaint that shall state the name and address of the person alleged to have engaged in the retaliatory action, all information relating to the retaliatory action and any other information that may be required by the commission. All complaints shall be filed with the division within sixty days after the alleged retaliatory action was committed.

B. The director shall advise the respondent that

a complaint has been filed against him and shall furnish him with a copy of the complaint. The director shall promptly investigate the alleged retaliatory action. If the director determines that the complaint lacks probable cause, he shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, he shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. An officer or employee of the labor department who makes public in any manner whatever any information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year.

D. A person who has filed a complaint with the division may request and shall receive an order of nondetermination from the director one hundred eighty days after the division's receipt of the complaint. The order of

nondetermination may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation and the complainant has not requested a waiver of right to hearing pursuant to the provisions of Subsection J of this section, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and who so elects, the director shall issue an order of nondetermination, which may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The complaint shall set forth the alleged retaliatory action, the secretary's rule or the section of the Conscientious Health Care Employee Protection Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the

allegations of the complaint at a hearing before the commission or hearing officer and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen or less than ten days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged retaliatory action occurred.

G. Within one year of the filing of a complaint by a person aggrieved, the commission or its director shall:

- (1) dismiss the complaint for lack of probable cause;
- (2) achieve satisfactory adjustment of the complaint as evidenced by order of the commission; or
- (3) file a formal complaint on behalf of the commission.

H. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged retaliatory action occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

I. For purposes of this section, "urgent medical

condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement and that poses a serious threat to the life of the person with the medical condition.

J. The complainant may seek a trial de novo in the district court in lieu of a hearing before the commission, provided that the complainant requests from the director, in writing, a waiver of the complainant's right to hearing within sixty days of service of written notice of a probable cause determination by the director. The director shall approve the waiver request and shall serve notice of the waiver upon the complainant and respondent. The complainant may request a trial de novo pursuant to Section 39-3-1 NMSA 1978 within thirty days from the date of service of the waiver. Issuance of the notice shall be deemed a final order of the commission for the purpose of appeal pursuant to Section 39-3-1.1 NMSA 1978.

Section 6. HEARING PROCEDURES.--

A. The respondent to a complaint made pursuant to Section 5 of the Conscientious Health Care Employee Protection Act may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the commission subpoenas for any person or for the production of any evidence pertinent to the

proceeding. The complainant shall be present at the hearing and may be represented by counsel. Each party shall have the right to amend his complaint or answer.

B. A panel of three members of the commission designated by the chairman shall sit, and a decision agreed upon by two members of the panel shall be the decision of the commission. However, no commissioner who has filed a complaint may sit on the panel hearing his complaint. Hearings also may be conducted by a hearing officer employed by the division or, if the hearing officer is unavailable, one member of the commission may be designated by the chairman to act as a hearing officer. A hearing officer shall have the same powers and duties as the commission as set forth in Paragraph (2) of Subsection A of Section 28-1-4 NMSA 1978.

C. The complainant or his representative shall present to the commission or the hearing officer the case supporting the complaint. No evidence concerning prior attempts at conciliation shall be received. The director shall not participate in the hearing, except as a witness.

D. The commission and the hearing officer shall not be bound by the formal rules of evidence governing courts of law or equity but shall permit reasonable direct examination and cross-examination and the submission of briefs. Testimony at the hearing shall be taken under oath



and recorded by tape or otherwise. Upon the request of any party, testimony shall be transcribed; provided that all costs of transcribing shall be paid by the party so requesting. Each commissioner and hearing officer may administer oaths.

E. Upon the conclusion of a hearing conducted by a hearing officer, the hearing officer shall prepare a written report setting forth proposed findings of fact and conclusions of law and recommending the action to be taken by the commission. The hearing officer shall submit the report to a review panel consisting of no more than three members of the commission designated by the chairman. No commissioner may sit on the panel reviewing the hearing officer's report issued in connection with a complaint filed by the commissioner. A decision by a majority of the members of the review panel shall be the decision of the commission. If the commission finds from the evidence presented at any hearing held pursuant to this section that the respondent has engaged in a retaliatory action, it shall make written findings of fact, conclusions of law and its decision based upon the findings of fact and conclusions of law. The commission may adopt, modify or reject the proposed findings of fact and conclusions of law and the action recommended by the hearing officer. Within five days after any order is rendered by the commission following a hearing, the commission shall serve

upon each party of record and his attorney, if any, a written copy of the order by certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day following the mailing. As part of its order, the commission may require the respondent to pay actual damages to the complainant and to pay reasonable attorney fees, if the complainant was represented by private counsel, and to take such affirmative action as the commission considers necessary, including a requirement for reports of the manner of compliance.

F. If the commission finds from the evidence that the respondent has not engaged in a retaliatory action, it shall make written findings of fact and serve the complainant and respondent with a copy of the findings of fact and with an order dismissing the complaint.

Section 7. ENFORCEMENT.--If a respondent to a complaint filed pursuant to the Conscientious Health Care Employee Protection Act is not complying with an order of the commission, the attorney general or district attorney, at the request of the secretary, shall secure enforcement of the commission's order by a district court. The proceeding shall be initiated by the filing of a petition in the district court where the respondent is doing business or the alleged retaliatory action occurred. A copy of the petition shall be served on the respondent personally or by registered mail,

return receipt requested. The court may make and enter upon the proceedings an order to decree enforcement of the order of the commission.

Section 8. APPEAL.--Any party may appeal the final decision of the commission pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Section 9. POSTING OF LAW AND INFORMATION.--Every employer subject to the Conscientious Health Care Employee Protection Act shall keep posted in a conspicuous place on his premises notices prepared by the division that set forth excerpts of that act and other relevant information as determined by the secretary. \_\_\_\_\_