



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2021-070

November 22, 2021

The Honorable Keith M. Ingram
State Senator
P. O. Box 1028
West Memphis, AR 72303-1028

Dear Senator Ingram:

This is in response to your request for an opinion on the following questions regarding Act 462 of 2021, the Medical Ethics and Diversity Act, codified at Ark. Code Ann. § 17-80-501, *et seq.* (Supp. 2021):

1. Could the belief or principle that individuals should be vaccinated for coronavirus 2019 (COVID-19) meet the definition of conscience under the Medical Ethics and Diversity Act?
2. If a medical practitioner, such as a doctor, refused, based on his or her conscience, to see or treat a patient who has not been vaccinated for coronavirus 2019 (COVID-19), would the medical practitioner be protected under the Medical Ethics and Diversity Act for exercising his or her conscience?
3. If a medical practitioner is not protected under the Medical Ethics and Diversity Act, would any other laws protect the medical practitioner for refusing to see or treat a patient who has not been vaccinated for coronavirus 2019 (COVID-19)?

RESPONSE

Your first two questions focus on the term “conscience” and some characteristic of the patient. This fails to recognize that the protected “right of conscience” under the Medical Ethics and Diversity Act (“the Act”) relates to a *service* that violates the practitioner’s conscience. In sum, these questions miss the point of the Act. Even if the belief that individuals should be vaccinated meets the definition of

“conscience,” the answer to your second question is “no” because you have not identified any particular service that violates that belief or principle. In response to your third question, I am unaware of any such state laws.

DISCUSSION

Question 1: Could the belief or principle that individuals should be vaccinated for coronavirus 2019 (COVID-19) meet the definition of conscience under the Medical Ethics and Diversity Act?

The Act defines “conscience” as “the religious, moral, or ethical beliefs or principles of a medical practitioner....”¹ It is unlikely that the belief that individuals should be vaccinated for COVID-19 meets this definition.

But even if that were not the case, that belief alone would not be a sufficient basis for an objection under the Act. Rather, as explained more fully in response to your second question, to be protected, an objection must relate to performing a healthcare service.

Question 2: If a medical practitioner, such as a doctor, refused, based on his or her conscience, to see or treat a patient who has not been vaccinated for coronavirus 2019 (COVID-19), would the medical practitioner be protected under the Medical Ethics and Diversity Act for exercising his or her conscience?

The Act, in relevant part, affords medical practitioners a “right not to participate in a healthcare service that violates his, her, or its conscience.”² The practitioner “[i]s not civilly, criminally, or administratively liable for the exercise of conscience rights not to participate in a healthcare service....”³ And the practitioner who exercises these rights “[s]hall not be discriminated against in any manner based upon his, [or] her ... declining to participate in a healthcare service that violates his, [or] her ... conscience.”⁴

¹ Ark. Code Ann. § 17-80-503(1)(A).

² *Id.* at § 17-80-504(a)(1).

³ *Id.* at § 17-80-504(a)(4).

⁴ *Id.* at § 17-80-504(a)(5).

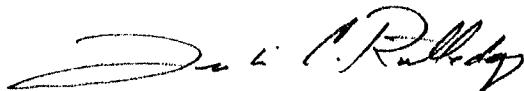
It is clear from these provisions that the protected “conscience rights” relate to the performance of particular *services*. Indeed, the Act makes clear that, the “[e]xercise of this right of conscience is limited to *conscience-based objections to a particular healthcare service*”⁵ and it defines “healthcare service” as “medical care provided to a patient at any time over the entire course of treatment,” including such services as “[i]nitial examination,” “[d]iagnosis or prognosis,” and “[d]ispensing or administering … medication.”⁶

Because the protected “right of conscience” under the Act must relate to a particular *service* that violates the practitioner’s conscience, the answer to your question is “no.” The protections under the Act would not apply, given that you have not identified any particular service that violates the belief or principle that individuals should be vaccinated.

Question 3: If a medical practitioner is not protected under the Medical Ethics and Diversity Act, would any other laws protect the medical practitioner for refusing to see or treat a patient who has not been vaccinated for coronavirus 2019 (COVID-19)?

I am unaware of any such state laws.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁵ *Id.* at § 17-80-504(b) (emphasis added).

⁶ *Id.* at § 17-80-503(5).