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HOUSE BILL 237

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Rick Miera

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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; DECLARING AN EMERGENCY.

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

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1 employees and to assist public bodies charged with ensuring  
2 that health care is safe and adequate.

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

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

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

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

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

13 E. "employer" means a person who has one or more  
14 employees and includes an agent of an employer and a public  
15 employer;

16 F. "health care professional" means a person  
17 licensed pursuant to Chapter 61, Articles 2, 3, 4, 5A, 6, 7A,  
18 8, 9, 9A, 10, 10A, 11, 12, 12A, 13, 14A, 14B, 14C, 14D and 31  
19 NMSA 1978;

20 G. "improper quality of patient care" means any  
21 practice, procedure, action or failure to act on the part of  
22 an employer that violates any law, rule or regulation or any  
23 professional code of ethics that affects or regulates  
24 appropriate quality of care of sick or injured persons and  
25 that may result in unsafe patient care;

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

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

7 J. "secretary" means the secretary of labor.

8 Section 4. EMPLOYER RETALIATORY ACTION PROHIBITED. -- An  
9 employer shall not take any retaliatory action against an  
10 employee because the employee, in good faith, does any of the  
11 following:

12 A. discloses, or threatens to disclose, to an  
13 employer or to a public body an activity, policy or practice  
14 of the employer that the employee believes to constitute  
15 improper quality of patient care;

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

20 C. objects to or refuses to participate in an  
21 activity, policy or practice that the employee believes:

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

25 (2) is fraudulent, criminal, an abuse of

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1 authority or gross mismanagement; or

2 (3) is incompatible with a clear mandate of  
3 public policy concerning public health, safety, welfare or  
4 protection of the environment.

5 Section 5. GRIEVANCE PROCEDURE. --

6 A. An employee claiming to be subject to a  
7 retaliatory action prohibited by the Conscientious Health Care  
8 Employee Protection Act may file with the division a written  
9 complaint that shall state the name and address of the person  
10 alleged to have engaged in the retaliatory action, all  
11 information relating to the retaliatory action and any other  
12 information that may be required by the commission. All  
13 complaints shall be filed with the division within one hundred  
14 eighty days after the alleged retaliatory action was  
15 committed.

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

25 C. If the director determines that probable cause

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

12 D. A person who has filed a complaint with the  
13 division may request and shall receive an order of  
14 nondetermination from the director one hundred eighty days  
15 after the division's receipt of the complaint. The order of  
16 nondetermination may be appealed pursuant to the provisions of  
17 Section 39-3-1.1 NMSA 1978.

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

25 F. If conciliation fails or if, in the opinion of

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1 the director, informal conference cannot result in  
2 conciliation and the complainant has not requested a waiver of  
3 right to hearing pursuant to the provisions of Subsection J of  
4 this section, the commission shall issue a written complaint  
5 in its own name against the respondent, except that in the  
6 case of a complaint filed by or on behalf of a person who has  
7 an urgent medical condition, who has notified the director in  
8 writing of the test results and who so elects, the director  
9 shall issue an order of nondetermination, which may be  
10 appealed pursuant to the provisions of Section 39-3-1.1 NMSA  
11 1978. The complaint shall set forth the alleged retaliatory  
12 action, the secretary's rule or the section of the  
13 Conscientious Health Care Employee Protection Act alleged to  
14 have been violated and the relief requested. The complaint  
15 shall require the respondent to answer the allegations of the  
16 complaint at a hearing before the commission or hearing  
17 officer and shall specify the date, time and place of the  
18 hearing. The hearing date shall not be more than fifteen or  
19 less than ten days after service of the complaint. The  
20 complaint shall be served on the respondent personally or by  
21 registered mail, return receipt requested. The hearing shall  
22 be held in the county where the respondent is doing business  
23 or the alleged retaliatory action occurred.

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

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- (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

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1 determination by the director. The director shall approve the  
2 waiver request and shall serve notice of the waiver upon the  
3 complainant and respondent. The complainant may request a  
4 trial de novo pursuant to Section 39-3-1 NMSA 1978 within  
5 thirty days from the date of service of the waiver. Issuance  
6 of the notice shall be deemed a final order of the commission  
7 for the purpose of appeal pursuant to Section 39-3-1.1 NMSA  
8 1978.

9 Section 6. HEARING PROCEDURES. --

10 A. The respondent to a complaint made pursuant to  
11 Section 5 of the Conscientious Health Care Employee Protection  
12 Act may file a written answer to the complaint, appear at the  
13 hearing, give testimony and be represented by counsel and may  
14 obtain from the commission subpoenas for any person or for the  
15 production of any evidence pertinent to the proceeding. The  
16 complainant shall be present at the hearing and may be  
17 represented by counsel. Each party shall have the right to  
18 amend his complaint or answer.

19 B. A panel of three members of the commission  
20 designated by the chairman shall sit, and a decision agreed  
21 upon by two members of the panel shall be the decision of the  
22 commission. However, no commissioner who has filed a  
23 complaint may sit on the panel hearing his complaint.  
24 Hearings also may be conducted by a hearing officer employed  
25 by the division or, if the hearing officer is unavailable, one

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1 member of the commission may be designated by the chairman to  
2 act as a hearing officer. A hearing officer shall have the  
3 same powers and duties as the commission as set forth in  
4 Paragraph (2) of Subsection A of Section 28-1-4 NMSA 1978.

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

10 D. The commission and the hearing officer shall  
11 not be bound by the formal rules of evidence governing courts  
12 of law or equity but shall permit reasonable direct  
13 examination and cross-examination and the submission of  
14 briefs. Testimony at the hearing shall be taken under oath  
15 and recorded by tape or otherwise. Upon the request of any  
16 party, testimony shall be transcribed; provided that all costs  
17 of transcribing shall be paid by the party so requesting.  
18 Each commissioner and hearing officer may administer oaths.

19 E. Upon the conclusion of a hearing conducted by a  
20 hearing officer, the hearing officer shall prepare a written  
21 report setting forth proposed findings of fact and conclusions  
22 of law and recommending the action to be taken by the  
23 commission. The hearing officer shall submit the report to a  
24 review panel consisting of no more than three members of the  
25 commission designated by the chairman. No commissioner may

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1 sit on the panel reviewing the hearing officer's report issued  
2 in connection with a complaint filed by the commissioner. A  
3 decision by a majority of the members of the review panel  
4 shall be the decision of the commission. If the commission  
5 finds from the evidence presented at any hearing held pursuant  
6 to this section that the respondent has engaged in a  
7 retaliatory action, it shall make written findings of fact,  
8 conclusions of law and its decision based upon the findings of  
9 fact and conclusions of law. The commission may adopt, modify  
10 or reject the proposed findings of fact and conclusions of law  
11 and the action recommended by the hearing officer. Within  
12 five days after any order is rendered by the commission  
13 following a hearing, the commission shall serve upon each  
14 party of record and his attorney, if any, a written copy of  
15 the order by certified mail to the party's address of record.  
16 All parties shall be deemed to have been served on the tenth  
17 day following the mailing. As part of its order, the  
18 commission may require the respondent to pay actual damages to  
19 the complainant and to pay reasonable attorney fees, if the  
20 complainant was represented by private counsel, and to take  
21 such affirmative action as the commission considers necessary,  
22 including a requirement for reports of the manner of  
23 compliance.

24 F. If the commission finds from the evidence that  
25 the respondent has not engaged in a retaliatory action, it

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1 shall make written findings of fact and serve the complainant  
2 and respondent with a copy of the findings of fact and with an  
3 order dismissing the complaint.

4 Section 7. ENFORCEMENT. --If a respondent to a complaint  
5 filed pursuant to the Conscientious Health Care Employee  
6 Protection Act is not complying with an order of the  
7 commission, the attorney general or district attorney, at the  
8 request of the secretary, shall secure enforcement of the  
9 commission's order by a district court. The proceeding shall  
10 be initiated by the filing of a petition in the district court  
11 where the respondent is doing business or the alleged  
12 retaliatory action occurred. A copy of the petition shall be  
13 served on the respondent personally or by registered mail,  
14 return receipt requested. The court may make and enter upon  
15 the proceedings an order to decree enforcement of the order of  
16 the commission.

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

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



1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
3  
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6 February 16, 1999  
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8 Mr. Speaker:  
9

10 Your LABOR AND HUMAN RESOURCES COMMITTEE, to  
11 whom has been referred  
12

13 HOUSE BILL 237  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17 1. On page 2, line 22, following "law," insert  
18 "practice act or" and after "rule" insert a semi-colon and  
19 strike the remainder of the line and all of lines 23 through  
20 25.

21  
22 2. On page 3, line 10, strike ", in good faith,".

23  
24 3. On page 3, line 14, strike "the employee believes  
25 to constitute" and insert "constitutes".

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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4. On page 3, line 21, strike "the employee believes".
5. On page 3, line 24, after the semicolon insert "or".
6. On page 3, line 25, after "fraudulent" insert "or" and after "criminal" strike the remainder of the line and on page 4 strike lines 1 through 4 up to the period.
7. On page 4, lines 13 and 14, strike "one hundred eighty" and insert in lieu thereof "sixty"., and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

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Sheryl Williams Stapleton,  
Chairwoman

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HLC/HB 237

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
5 (Chief Clerk) (Chief Clerk)

7 Date \_\_\_\_\_

9 The roll call vote was 5 For 0 Against

10 Yes: 5

11 Excused: None

12 Absent: Foley, Roberts, Thompson, Tripp

14 127531.1

15 J: \99BillSWP\H0237

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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4 February 22, 1999  
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6  
7 Mr. Speaker:  
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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10

11 HOUSE BILL 237, as amended  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:

15 1. On page 2, line 18, after "12A" insert "12B, 12C,"  
16 and after "14D" insert ", 14E".

17 2. On page 4, line 8, after "Act" insert ", after he  
18 has exhausted all other administrative grievance  
19 procedures, ".  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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Respectfully submitted,

\_\_\_\_\_  
R. David Pederson, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna

Absent: None

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

February 25, 1999

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 237, as amended

Amendment sponsored by Representative Rick Miera

1. On page 2, line 13, strike "one" and insert "four".

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Rick Miera

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

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HF1/ HB 237

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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