

1 HOUSE BILL NO. 437

2 INTRODUCED BY E. STAFMAN

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

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

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

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

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

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

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

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

27 WHEREAS, the standards of care provided to patients will change over time because a standard of
28 care is based on what a similarly qualified, reasonable medical professional would do in the same

1 circumstances in a similar timeframe; and

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

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

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

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

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

18 (a) knowingly or purposely committed and not merely negligent; and

19 (b) outside the accepted standards of care for the health care provider.

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

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23 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
24 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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