

March 21, 2023

House Committee on Economic Matters
Lowe House Office Building
6 Bladen St., Annapolis, MD 21401

**Re: Comments on Maryland SB 591 Noncompete and Conflict of Interest Provisions -
Application of Prohibition and Suggested Amendment**

I, Christopher Caniglia, Doctor of Veterinary Medicine, Diplomat of the American College of Veterinary Surgeons Large Animal, am pleased to submit these comments to the Maryland House of Delegates on Maryland SB 591 Noncompete and Conflict of Interest Provisions - Application of Prohibition.

As a veterinarian and board certified surgeon, I strongly support the proposed law, however non-compete agreements should be prohibited more broadly to align the the current rule change proposed by the Federal Trade Commission. Please amend SB 591 to prohibit non-compete agreements for all workers of Maryland, regardless of wage. In the profession, non-compete agreements are extremely common and restrictive with respect to the geographic radius, time frame, and solicitation. Non-competes are detrimental to the veterinary profession for three reasons: (1) They force talented vets to relocate to seek other employment opportunities or leave the profession entirely, (2) they strain the fundamental oath to do no harm and uphold the standard of care for their patients, and (3) they are incompatible in an at-will employment state.

I. Non-competes force veterinarians out of a profession that is facing dire shortages

According to the American Association of Equine Practitioners, there is a severe shortage of equine veterinarians. Only 1.3% of graduating veterinarians go into equine practice, 50% of those individuals leave the profession within 5 years, either switching to small animal practice or quitting veterinary medicine altogether. Non-compete agreements are contributing to this exodus from the profession. This leads to increased strain and stress on the veterinarians still in the profession which undoubtedly is a factor in the high suicide rate in the profession.

Thus, non-compete agreements are not only infringing on the rights of the specific employee, but also on the rights of other colleagues in the same profession. It should also be noted that switching to small animal practice is not a viable option for all equine practitioners, as many have undergone extensive training to specialize in their specific career and small animal practice would be considered an entirely different profession for them. It would be the same concept as a human radiologist having to obtain a job as a human surgeon – yes both are human doctors, however, most individuals would not want the former taking a scalpel to you.

In my own career, at a previous practice in Maryland, I had a contract with a non-compete agreement with a two year term and a radius of 30 miles. My wife's employment situation changed and she needed to work in Florida during the winter months. I renegotiated my employment agreement with the employer to allow me to be part-time so that I could travel to

Florida to be with my family. In exchange for this, the employer presented a much riskier pay schedule (from salary to straight commission), and a more restrictive non-compete agreement (from 30 miles to 45 miles). I decided that being able to be with my family some of the time was worth these additional risks and restrictions.

The opportunity then presented itself for me to do some part time work while in Florida. I had previously worked for a practice in Florida and had a non-compete agreement there that was three years in length, for which I was already just over two years into that period. It is uncertain whether the practice I previously worked for in Florida would have pursued this knowing that it had been over two years since my employment. Nevertheless, after I signed my new contract and non-compete agreement with the Maryland employer, he called the practice in Florida to notify them that I would be back in the Florida area on a part time basis. I did not have the financial means to afford a legal defense should the Florida practice try to enforce the non-compete and so I was unable to earn any wage in my trained profession during my visits. The employer-employee relationship further deteriorated as the employer began to dictate what type of appointments and cases I could treat. Since I was now on a straight commission based salary, this markedly hurt my income generation.

In the end, I could no longer afford to make a living at this practice and I could not work in Florida where my wife was working. I was forced to resign and due to the non-compete agreement radius, we were forced to sell our home and move for me to obtain employment in my trained profession. This circumstance is all too common in the equine veterinarian profession.

II. Non-competes strain the fundamental oath to do no harm

Doctors and veterinarians alike take oaths to do no harm and uphold the standard of care. When hospital administrators or a veterinarian that owns a practice are making decisions or performing actions that are compromising patient care, the doctors and veterinarians that are their employees are obligated by their oath and moral compass to speak up to correct the problem.

This dynamic, coupled with a non-compete clause, results in fear of retaliation from the employer. The employer could terminate them and enforce a non-compete agreement simply for the doctor or veterinarian upholding their oath to their profession.

Furthermore, the doctor or veterinarian may decide that they no longer wish to be associated with substandard care due to their own conscience and liability. If they have a non-compete agreement, then the employer is denying them this right to not be associated with substandard medical care. In the medical field, substandard care has serious consequences, including death of the patient. Any doctor or veterinarian has the right to not be associated with that and that right should not be tied to where they are able to work and live.

A specific example of this is occurring at my current practice. There were numerous examples of the practice owner not telling the truth about the patients' status under anesthesia so that I could provide guidance on proper therapy. This resulted in the death of a patient among numerous other complications. I spoke up about this and despite discussion, these problems continued to occur. This left me with only one rational and ethical decision – that the practice

owner could no longer run anesthesia for my surgical cases. I am currently facing retaliation from the practice owner in numerous ways for this decision. The practice owner had me sign a non-compete agreement when I started at this practice five years prior.

Thus, I and many other veterinarians are faced with the dilemma of staying in an environment that is providing substandard care to patients. This presents serious consequences, including death to patients, hostile retaliation, and being forced to relocate family and children in order to make a living.

I am currently the only board certified equine surgeon in the state of Maryland that receives emergency surgeries after hours. If I am forced to leave my current practice due to the concerns with the patient care of management, this will leave the horse owner's of the state at a great disservice.

III. Non-compete agreements are incompatible with at-will employment

The concept of a non-compete agreement in Maryland is further called into question due to the fact that Maryland is an at-will employee state. This principle allows the employer to terminate any employee at any time without cause. Thus, if a non-compete agreement is in place, an employee could be terminated and bound to a non-compete. Pending the terms of the non-compete this could force the employee to have to move or change careers. This gives the employer authority to decide where you can live and what you can do to earn a living. Where you live is your life, what you do to earn a living is your liberty, and trying to provide for your family and create a better life for them is your pursuit of happiness. To allow an employer to have this type of power goes against the 14th Amendment and most assuredly goes against the principles on which this country was founded.

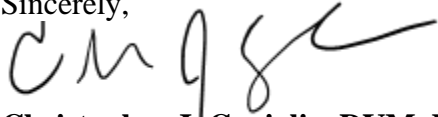
Furthermore, in these at-will states, non-compete agreements are incongruent with logic. If the employer terminates the employee because they are performing at an inferior level with respect to their work, then what fear should the employer have for that individual to compete against them? If they are no good, then they will be of little threat. On the other side, if the employee is excelling in their work for the employer, then the employer should be cognizant of keeping that employee happy, creating a good work environment, and providing opportunities for advancement so the employee will want to stay. Non-compete agreements allow the employer to disregard the valuable contributions of an outstanding employee to the company.

In conclusion, the Founding Fathers began this country with the notion that we all had the unalienable rights to life, liberty, and the pursuit of happiness. It is time that every citizen of this nation have protection of those rights with respect to their employment. In the medical field specifically, all non-compete agreements show disregard to public interest. As a patient you have a right to choose your doctor and as an animal owner you have a right to choose your veterinarian. An employer is disregarding the public interest by attempting to control the public's choice through a non-compete against a veterinarian or doctor.

Abolishing non-compete agreements will provide these protections. I sincerely hope that the Economic Matters Committee will amend SB 591 to broadly prohibit non-compete agreements, regardless of wage, and ban all non-compete agreements going forward and dissolve existing non-compete agreements.

Thank you for the opportunity to share my views.

Sincerely,

A handwritten signature in black ink, appearing to read 'CMJSC', written over the printed name.

Christopher J. Caniglia, DVM, DACVS-LA