February 26th, 2024

The Honorable Pamela G. Beidle
Chair, Senate Finance Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St., Annapolis, MD 21401

RE: SUPPORT FOR HB 1388 LABOR AND EMPLOYMENT – NONCOMPETE AND CONFLICT OF INTEREST CLAUSES – VETERINARY AND HEALTH CARE PROFESSIONALS BILL

FAVORABLE

Dear Senator Beidle:

Thanks for the opportunity to comment on HB1388 banning noncompete clauses.

I serve as system Chief of Cardiac Surgery and Surgical Director of the Heart and Vascular Institute at Johns Hopkins and have held leadership positions at several nonprofit academic medical centers during my career, including a decade as Chief of Cardiac Surgery at the University of Maryland. The views expressed in this letter are my own and do not necessarily represent those of my employer.

I strongly support this bill and urge you to implement it forthwith.

I have bitter experience with noncompetes. I am aware of a situation where a very promising young academic cardiac surgeon offered and accepted an opportunity for a promotion to lead a program at an AMC within the area of the restrictive covenant. The multibillion dollar health system that was his current employer served him with an injunction and blocked his career advancement, one week before he was to start in the new role. A bitter outcome and patently unfair. He has just taken a similar position in a distant state and is leaving his wife (also a physician) and two young children behind. Noncompetes depress wages, limit physician mobility and prevent continuity of care for patients.

Telemedicine has become an important mechanism for providing care: the rule should not impede this important shift toward virtual care. As a cardiac surgeon working at a large health system, my colleagues and I have documented the safety of telemedicine in a highly specialized surgical practice (Effectiveness of telemedicine in a mitral valve center of excellence J Card Surg 2022 Jul;37(7):1939-1945). The geographic restrictions of noncompetes do not make sense in the context of telemedicine. Please see "Noncompete Agreements — The Need for a Refresh" (New England Journal of Medicine 387;6).

The American Medical Association's (AMA's) Code of Medical Ethics disfavors non-compete agreements, stating that they restrict competition, disrupt continuity of care, and potentially deprive the public of access to medical care.

Generally, younger physicians lack the fiscal and legal resources to effectively challenge restrictive covenants, prospectively or retrospectively.

The cost and time requirements to renegotiate restrictive covenants are likely prohibitive, especially when an individual physician is opposed by a fully resourced corporate, legal department.

Therefore, physicians in a captive workforce culture, with highly encumbering restrictive covenants, may experience the moral injury of tolerating lost autonomy versus the significant financial loss of relocation. This can adversely affect career/family dynamics when physicians are not permitted to remain in a similar geographic location.

Practices and hospitals should foster retention through innovation, positive and progressive culture and trust, rather than a captivity culture and restrictive covenants. Physician burn-out is a major challenge and noncompetes importantly contribute to physician burn-out.

Physicians who exit health systems with restrictive covenants may leave patients unable to access an established and trusted physician, resulting in loss of care continuity, fragmented care, costly reestablishment with other provider(s), and potentially inability to access clinicians of similar quality.

Non-solicitation and nondisclosure restrictions limit physicians from informing their patients as to their new location or the reason for their departure. Patients have a right to know where their physician went, so that they can make an informed decision about following their physician or not. In some cases, this decision may require patients to change insurance companies/networks and, in some scenarios, physicians are no longer allowed access to the electronic health record for that patient after their departure. RCs should not disenfranchise patients from choice in health care provider, and employers should not overextend non- solicitation to the point of making it appear that the physician has vanished.

The notion of "economic loss" by a practice from a physician leaving is not real; it takes about 1-2 years for a new physician to establish him/herself. Noncompetes are fundamentally anti-physician; there are a number of horror stories around this. By "locking in" a physician to a situation that is always fluid, it does not serve patients interests.

Attorneys are not subject to non-competes (they are not enforceable) and the American Bar Association has determined that they are unethical (https://www.jdsupra.com/legalnews/aba-opines-on-lawyer-non-competes-but-91897/).

Thanks for your consideration. A vote for HB 1388 will improve the quality of medical care in the State of Maryland.

Sincerely,

James S. Gammie, M.D.