A Veatch Written Testimony MD 2024 Final.pdf
Uploaded by: Amiya Veatch
Position: FAV

Respected Delegate,

Please support HB 1388 to prohibit non-compete agreements in health care and veterinary professions.

I am a Maryland horse owner at 11305 Riverview Road, Fort Washington, MD 20744 that is being harmed by the use of non-compete agreements in veterinary employment contracts. My horses are, right now, without veterinary care. My veterinarian had to leave the practice and cannot care for my animals at my farm due to a non-compete clause. I live too close to the practice. So, god-forbid, if one of my horses gets sick or injured, I will have to call around to local equine veterinarians and beg them to help me. Without a prior relationship, the chances of someone helping me in the middle of the night is very low, as they are already overworked. My other option is to load my suffering horse in a trailer to drive outside the area restricted by the non-compete for my trusted veterinarian, who will also need to drive about an hour for my horse to get care. Having my trusted veterinarian unable to treat my horses, after years of dedicated service, is simply unbearable.

It is my right and responsibility to choose who cares for my animals. The doctor-patient relationship is exactly that, a relationship between me and the veterinarian of my choosing. The use of a non-compete clause by a practice or business forces me into a contract that I didn't even know about, and has a significantly negative impact on animal welfare in the area.

1. The veterinary shortage is well-known and documented. The AVMA (American Veterinary Medical Association) acknowledges shortages of veterinarians in rural America, food animal, equine, academia, shelters, emergency practices, specialties, and public health areas. The AAEP (American Association of Equine Practitioners) data shows that 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. The Mars Veterinary Health Study (2022) predicts a shortage of over 15,000 veterinarians by 2030.
2. Several states have recognized that non-competes violate the sanctity of the doctor-patient relationship similar to how the American Bar Association prohibits non-compete agreements because they violate the attorney-client relationship. California, Oklahoma, North Dakota have banned non-compete agreements across professions. Connecticut, Florida, Indiana have specifically banned non-compete clauses for physicians, and Maine has banned non-compete clauses for veterinarians.

Thank you for your service to our community, for hearing my concerns, and, ultimately, for supporting the elimination of non-compete agreements in the veterinary profession (HB 1388).

Sincerely,

DocuSigned by:
C943D277831B456...

Amiya Veatch
Maryland resident and horse owner
3/4/2024

BishopFavHB1388.pdf
Uploaded by: Bradley Bishop
Position: FAV

House Bill 1388 Testimony - FAV

Dear Members of the Maryland Senate Finance Committee,

I am writing to express my **unequivocal support for House Bill 1388**, an important piece of legislation that addresses the critical issue of noncompete and conflict of interest clauses in employment contracts for veterinary and health care professionals. As a veterinary internal medicine specialist with a deep commitment to the well-being of animals and their owners, I have personally witnessed the profound negative impact that such restrictive clauses can have on both individuals and the broader community.

The emotional trauma and mental health toll inflicted by noncompete clauses are not theoretical concepts; they are real and tangible consequences faced by both veterinary professionals and the pet-owning community. I have experienced first-hand the heartbreaking scenarios where pet owners, desperate for specialized care, were left in a state of helplessness because of the limited availability of veterinary specialists due to noncompete restrictions.

One particularly distressing incident involved me receiving a tearful voicemail from a pet owner who could not find an internist for their ailing pet, resulting in a steady decline in the animal's health. Due to the constraints imposed by noncompete agreements, I found myself unable to respond and provide assistance, leaving the owner (and their pet) in distress. Additionally, I received desperate messages on social media from pet owners who, in their time of need, reached out to me for guidance because no other specialist was available to help them.

The detrimental effects extend beyond emotional distress, impacting the lives of animals as well. Reports surfaced of animals declining on waiting lists, with some sadly succumbing to their ailments due to the scarcity of available specialists. Primary care veterinarians were overwhelmed with complex cases for which they had no local specialists to refer, which resulted in backlogs of cases and increased stress to the local healthcare system. This almost certainly caused even further animal morbidity and mortality.

In my own experience, the limitations imposed by noncompete clauses compelled me to work outside my state, contributing to a broader economic detriment. As the closest facility within my specialty was located outside the state borders, I found myself traveling extensively, resulting in a loss for the local economy and a disruption in the continuity of care for the community I served.

House Bill 1388, by declaring certain noncompete and conflict of interest provisions as null and void, recognizes the importance of prioritizing public policy over restrictive contractual arrangements. This legislation is not just a legal reform; it is a compassionate response to the cries of distressed pet owners and the well-being of the animals under our care.

I urge you to wholeheartedly support House Bill 1388, ensuring its passage for the greater good of our communities, the welfare of animals, and the prosperity of the state.

Sincerely,

Dr. Bradley Bishop
1230 Rollins Ave
Charlotte, NC 28205

Written Testimony Brittany Willliamson.pdf
Uploaded by: Brittany Williamson Caniglia
Position: FAV

Written testimony by and in support of bill HB 1388

Brittany Williamson Caniglia

5950 Inscoe Rd,

Deale, MD 20751

Dear Honorable Senators of the State of Maryland. I submit this written testimony in favor of HB 1388 to prohibit non-compete agreements in health care and veterinary professions. My name is Dr. Brittany Williamson. I am a horse veterinarian specializing in sports medicine and rehabilitation. I'm here to support HB 1388 and give a personal testimony of how this issue is affecting me. I moved to the state of Maryland 7 years ago and began to build a client base of horse owners while I still worked for another practice out of state. When I joined a practice in Southern Maryland it was my express intent to make this practice my forever home. It was agreed upon by the current owner of the business that after several years of working as an associate, I would be permitted to buy-in to the business and eventually become the owner. I brought my current clients to the practice and my reputation brought others throughout the four years I worked there. This practice had a single owner and at first it seemed like a good fit. However, over time it was clear that I did not share the same views on business, patient care, or ethics. As the business owner's desire and ability to practice decreased, I saw the cost of tests and medications increase to make up an easy dollar. Medications were frequently marked up 500-600% or more, making them unaffordable for the average owner, and sacrificing patient care.

The business had multiple heath and radiation code violations, and the owner repeatedly lied to government organizations about these violations. For example, the Maryland department of radiological health requires that all x-ray generators be registered with the state and then inspected and calibrated annually. This business owner chose not to register or have 4 of her 5 units safety inspected and calibrated for the entire time I was employed there. As a result, employees were potentially exposed to an unknown amount of scatter radiation on a daily basis. I myself suffered a miscarriage during my employment and I can't help but wonder if this was the cause, as lead gowns do not protect against all scatter radiation. I was not alone in this situation. I drove a co-worker to the emergency room while she cried and bled through her clothes as she suffered an early miscarriage. I mourned the loss of an otherwise healthy pregnancy with another co-worker at 16 weeks gestation. During my 4 years of employment, there were 6 pregnancies at the practice, to my knowledge, and 50% of them ended in miscarriage. Despite being fully aware of her radiation violations, instead of correcting the issue, she instructed her office manager to lie to radiological inspectors about the number of x-ray generators that she owned.

Another issue that directly impacted me was an unreliable emergency on-call service. I shared ambulatory on call with the owner and another associate veterinarian. Yet when the owner was on call, she would sometimes be hours away from the practice or simply refuse to see emergency cases. This meant that I was essentially on call 24/7 for all clients with which I had a close business or personal relationship. If I wasn't available, I couldn't guarantee that an animal wouldn't be left in distress without care, which happened on multiple occasions. When the other associate veterinarian left the practice, the owner placed me on call for sometimes a week at a

time while she went on vacation, even though this was a violation of the negotiated terms of my contract.

These things ultimately led me to leaving the practice and starting my own business. Because of a non-compete clause in my contract, owners close to the practice are now having to haul their horses over an hour away for care. This causes increased stress on the animal and undue hardship on the owner. Because there are so few specialists in my field, owners that are unable to bring their horses to me have resorted to using out-of-state veterinarians to come to their farm. This is revenue leaving the state of Maryland that otherwise would not if I was permitted to work in their area. Maryland is on the verge of a veterinary crisis, particularly in equine medicine. Statistics calculate that the ratio of equine veterinarians to horses is 1:1300. The profession demands long hours and hard work, both physically and emotionally. If we are going to keep equine veterinarians in the state, we need to do everything we can to protect the physical and mental health of these professionals. While Maryland is the most horse dense state in the country, the main reason I chose to move to Maryland was to be closer to family. That proximity to family is an important factor that protects my mental well-being. A recent study published in September 2023 in JAMA reported that health care workers had a 32% increase in suicide rates compared to non-health care professions. I don't think that anyone could argue that the lack of a support network and/or hurdles to proper patient care aren't contributing to this crisis.

I firmly believe non-compete clauses protect poor business practices and prevent providers from advocating for better patient care and better working environments. In speaking with health care workers in many fields, I have heard the same story over and over again. Business owners made decisions based on profit, not on patient care, and when the health care workers advocated for what they believed to be best for their patients, they were threatened with termination or terminated and their non-compete clauses were upheld. The number one priority for health care in Maryland needs to be just that, health and care, not money and greed. I also firmly believe that patients are not assets to be bought and sold. A patient or animal owner should have the right to choose the provider that is best for them regardless of who they work for. Non-compete clauses not only negatively affect patients and providers, they also negatively affect health care costs. Economic studies have shown that non-compete clauses raise health care costs for patients and insurance companies. Continuity of care reduces redundant testing and improves patient outcomes. It has been shown to reduce mortality rates significantly when a person is able to see the same provider for follow up care. And that is why I am here today advocating for health care workers and to support House Bill 1388. Thank you.

Brittany Williamson, DVM

Carol Tweed, MD HB1388 Senate Finance Committee te

Uploaded by: carol tweed

Position: FAV

Carol Tweed, M.D.
HB 1388: IN FAVOR
March 27, 2024

I write this letter in strong favor of the Maryland Senate Finance Committee passing HB1388.

I am a physician practicing in Annapolis and Easton, MD. Specifically, I am a hematologist/oncologist. I specialize in the care of breast cancer, serving on national oncology research leadership committees, teaching Johns Hopkins medical students, and serving as editor for the National Cancer Institute's PDQ, amongst other non-clinical roles. Most importantly, I have cared for thousands of Maryland cancer patients, with compassion and clinical excellence and deep commitment.

In 2012, I moved to Annapolis to join an esteemed oncology group, employed at the time by Anne Arundel Medical Center (AAMC). In 2020, after requesting meetings with AAMC leadership regarding our ongoing requests for improvement in quality and safety of patient care in the AAMC service line, we were terminated. All nine of us, respected and trusted Annapolis oncologists, were terminated. We were served with letters advising of AAMC's plan to enforce our restrictive covenants (noncompete restrictions) and to prevent our "solicitation" of patients.

Acutely, our patients were affected. <u>This bill, above all else, is about the patient experience.</u>

This is the experience of frightened, medically complex patients, struggling to preserve or maintain life. They then lose their anchor, the physician that knows them, knows their goals, knows their family, knows their medical history. Suddenly, they cannot find their doctor. There's the patient on my doorstep in Davidsonville, with candy in one hand for my children as an apology for interrupting our family time, apologizing but scared they had no other way to find my new practice, because the hospital had taken legal action to prevent me for notifying them of my contact information after termination. There is the young woman with metastatic breast cancer, who died at AAMC without me by her side. Years of treatment and the promise that in this one moment, I would be there to palliate…all wiped away. There is the patient getting weekly chemotherapy treatments, driving two hours on the beltway, sick and fatigued, just to see me.

Finally, the hospital asserted that our noncompete restrictions also covered telemedicine. Not just that I could not perform telemedicine visits from a location within restricted zip codes, but also that if the patient resided in a restricted zip code, they could not do telemedicine from their home with me. Sick patients, during a pandemic, could not perform visits via telemedicine from their homes because of AAMC hospital legal threats. This was unprecedented; the notion of such patient, not just physician, restrictions was absolutely unprecedented.

These examples, these events — they represent eradication of patient choice. Eradication of patient quality of care. Eradication of patient safety. <u>This bill is about the patients, not business.</u>

Thank you. Please support HB 1388.
Carol Tweed, M.D.

Interim Award (April 14, 2021).pdf
Uploaded by: carol tweed
Position: FAV

JAMS ARBITRATION
Benson Everett Legg, JAMS Arbitrator

BENJAMIN B. BRIDGES, MD, et al.	*	
	*	
Claimants,	*	
v.	*	JAMS Reference No: 1410008607
ANNE ARUNDEL PHYSICIANS GROUP, LLC	*	
	*	
Respondent.	*	

* * * * * * * * * * * * *

Interim Award
April 14, 2021

SUMMARY OF DECISIONS

1. AAPG did not materially breach its Employment Agreements with the nine (9) Oncologists by, for example, closing a lab used by them or failing to add drugs to the Oncology Formulary.

2. AAPG has a legally protected interest sufficient to validate the non-competition provision of the Oncologists' Employment Agreements.

3. The use of the broad phrase, "practice of medicine" does not invalidate the non-competition provisions of the Oncologists' Employment Agreements.

4. The two-year term of the post-termination restrictions in the Oncologists' Employment Agreements is reasonable and enforceable.

5. The Territory, which includes the Primary Service Area and the Extended Service Area, is overly broad. I will "blue pencil" the Territory by excising all zip codes beyond the Primary Service Area, where over 80% of AAMC's oncology patients resided according to 2019 statistics.

6. The non-competition clauses of the Oncologists' Employment Agreements neither impose an undue burden on the Oncologists, nor do they violate public policy.

7. The non-competition clauses of the "Clinton 4" do not include a "private practice carve out."

8. The patient solicitation provisions of the Oncologists' Employment Agreements are overbroad and, therefore, unenforceable.

9. None of the Oncologists violated their restrictive covenants by accepting employment with MOH during their tenure with AAPG. Their Shareholder Agreements with MOH did not become effective until October 23, 2020.

10. AAPG terminated Drs. Taksey, Graze, Selonick, Werner, Garg, and Bridges without cause. Thus, their post-termination non-competition covenants, as set out in Section 14.3, are unenforceable.

11. The Oncologists did not misappropriate AAPG and AAMC's confidential and proprietary information. Ex. J-20 was created to determine the Oncologists' compensation pursuant to the complex compensation formula in their Employment Agreements. It was not created for marketing purposes. The information in Ex. J-20 was useful, but not indispensable, to MOH in making the decision to hire the Oncologists. Ex. J-20 has limited future competitive value to MOH and U.S. Oncology. AAPG and AAMC did not take strict measures to safeguard the document. Hence, it is not a trade secret under MUSTA.

12. Drs. Taksey, Werner, and Tweed did not breach their duty of loyalty by disclosing proprietary information derived from their service on the Medical Oncology Executive Committee. AAPG failed to substantiate this claim by identifying the proprietary, and valuable business information disclosed to the Oncologists. I credit the doctors' testimony that the purview of the committee was patient care and treatment, not business plans.

13. Drs. Taksey, Graze, Selonick, Werner and Garg did not violate Section 14.1(B) of their Employment Agreements by managing, operating, or providing professional services to MOH and U.S. Oncology.

14. Drs. Taksey, Selonick, Werner, and Garg violated their common law duty of loyalty to AAPG. While AAPG employees, they actively assisted MOH and U.S. Oncology in recruiting AAMC employees. I will hold a hearing on the subject of damages.

The Parties

Claimants, Counter-Respondents are Benjamin B. Bridges, M.D. ("Dr. Bridges"), Adam Goldrich, M.D. ("Dr. Goldrich"), Carol K. Tweed, M.D. ("Dr. Tweed"), David Weng, M.D., Ph.D. ("Dr. Weng"), Ravin Garg, M.D. ("Dr. Garg"), Peter R. Graze, M.D. ("Dr. Graze"), Stuart E. Selonick, M.D. ("Dr. Selonick"), Jason D. Taksey, M.D. ("Dr. Taksey"), and Jeanine L. Werner, M.D. ("Dr. Werner") (hereinafter sometimes collectively referred to as the "Oncologists"). Respondent is Anne Arundel Physician Group, LLC ("AAPG"). Anne Arundel Medical Center, an affiliate of AAPG is referred to as "AAMC."

The Pleadings

On July 17, 2020, the Oncologists initiated this arbitration by filing a Demand for Arbitration together with a Notice of Claims and Physician Employment Agreements. On July 27, 2020, the Oncologists filed an Amended Demand for Arbitration. They seek an order declaring that the post-employment Non-Competition and Non-Solicitation restrictions in their respective Employment Agreements with AAPG are null, void, and unenforceable. Further, they seek a declaration that they are authorized to practice medicine for a private practice within the Primary Service Area specified in their Employment Agreements.

Inter alia, the Oncologists also seek the following declarations:

(i) The Non-Competition and Non-Solicitation Covenants in the AOC Agreement and the Non-Competition Covenant in Dr. Goldrich's Employment Agreement are void and unenforceable because AAPG terminated the Employment Agreements of the oncologists covered by these agreements without cause.

(ii) Maryland Oncology Hematology, LLC ("MOH") is a private medical practice that is neither part of nor affiliated with any hospital or healthcare system.

(iii) U.S. Oncology is a business management services company that is unrelated to MOH.

(iv) MOH does not provide clinical or administrative services to any healthcare system, hospital, or affiliate of any healthcare system or hospital.

(v) Drs. Garg, Graze, Selonick, Taksey, and Werner neither managed nor operated MOH while they were employed by AAPG.

(vi) The Oncologists did not unfairly compete with AAPG.

(vii) The Statistics Report is not a trade secret under MUSTA.

(viii) The Oncologists did not violate their contractual confidentiality obligations by sharing the Statistics Report with MOH, and they had a legal right under the National Labor Relations Act to share the Statistics Report with MOH.

Respondent, AAPG answered the Demand and filed a Motion for Leave to File Counterclaims Against Claimants. The Arbitrator granted the motion and received the Counterclaims. In January 2021, Respondent filed Amended Counterclaims, which assert the following counts:

Count I: Breach of Contract Against all Oncologists. *Inter alia,* Respondent alleges that the Oncologists breached their respective employment agreements by (i) accepting employment with a competitor of AAPG, (ii) working for MOH in violation of their Employment Agreements, (iii) disclosing confidential and proprietary information to MOH, (iv) assisting in

the management and operation of MOH while still employed by AAPG, and (v) not acting in the exclusive and best interests of AAPG while still employed by AAPG.

Count II: Breach of the Duty of Loyalty and Fiduciary Duty Against Drs. Taksey, Werner, and Tweed. Respondent contends that as representatives on the Medical Oncology Executive Committee for AAPG and AAMC, these doctors owed AAPG a special duty of loyalty. The doctors violated this duty by disclosing to MOH AAPG's patient statistics, financial data about AAPG's performance, AAPG's strategic plan, and other financial and proprietary information. Respondents seek compensatory damages, including the amounts paid as wages during the period in which the doctors engaged in disloyal acts, and punitive damages.

Count III: Unfair Competition against all Oncologists. Respondents contend that by engaging in the misconduct alleged in Counts I and II, Claimants damaged Respondent in an amount to be determined at the arbitration hearing.

Count IV: Violation of the Maryland Uniform Trade Secrets Act (MUSTA) against all of the Oncologists. Respondent contends that its patient statistics and other proprietary information are trade secrets protected by MUSTA. AAPG claims that the Oncologists misappropriated its trade secrets by disclosing them to MOH, unjustly enriching themselves and harming AAPG. Respondent seeks an amount to be determined at arbitration that exceeds $75,000 exclusive of interest and costs plus an award of punitive damages and attorneys' fees as permitted under the statute.

Other Relief: AAPG seeks an injunction preventing the Oncologists from (i) engaging in wrongful competition against their former employer, (ii) violating their common law duties

towards AAPG, and (iii) violating the non-competition provisions of their respective Employment Agreements.

Governing Law

The Employment Agreements provide that they shall be governed by and construed in accordance with the laws of the State of Maryland.

Arbitration

The Employment Agreements provide for arbitration of any disputes arising under them. The written decision of the arbitrator is binding, final and conclusive on the parties and enforceable by a court of competent jurisdiction.

Prevailing Party

If a dispute over the Employment Agreements is taken to arbitration, the prevailing party is entitled to recover reasonable attorneys' fees, costs, and all expenses incurred in that proceeding. By stipulation, the parties agreed to litigate the issue of fees and costs after the award deciding the merits has been entered.

The Governing Rules

The JAMS Comprehensive Rules & Procedures ("JAMS Rules") apply.

Discovery

By agreement of the parties, I permitted discovery, which, *inter alia.,* included document requests, depositions of the nine Oncologists, and depositions of MOH and AAPG by their corporate representatives.

The Merits Hearing

The arbitration hearing was spread over eight days in January 2021. Fifteen witnesses testified. More than fifty exhibits were introduced.

Post-Hearing Briefing and Argument

The parties filed post-hearing briefs consisting of 161 pages. Counsel made closing argument on February 19, 2021. I held further argument on April 7, 2021.

Maryland Law Regarding Restrictive Covenants

The law governing post-employment non-competition covenants varies from state to state. In most states, covenants not-to-compete are valid if reasonable in purpose, duration, and geographic reach. In California and a few other states, however, such covenants are almost always void as illegal restraints on trade and employment.[1] In Connecticut, although non-competition covenants are legal if reasonable, a specific statute regulates the medical profession. The statute prohibits clauses that restrict a physician's competitive activities (i) for longer than one year, and (ii) beyond a 15-mile geographic radius from the primary site where the physician now practices. In Connecticut, a physician's non-competition clause is also unenforceable if the contractual relationship was terminated by the former employer without cause. Conn. Gen. Stat. Section 20-14(p). *See Stamford Health Medical Group v. Alleva,* 2018 WL 5307842 (Sup. Ct. Conn. 2018).[2]

[1] *See,* Orrick Law Firm, California Law on Restrictive Covenants and Trade Secrets. Orrick's monograph states that Montana, North Dakota, and Oklahoma are also hostile to post-termination non-competition covenants.
[2] Although the issue was not squarely before the court, it decided that contractual bans on soliciting patients or misuse of confidential information remain valid after the statute. Fn. 3.

Because the law regarding post-employment restrictive covenants varies from state to state, it is prudent to focus on Maryland case law. "In Maryland, a covenant not to compete will generally be upheld if its duration and geographic area are only so broad as is reasonably necessary to protect the employer's business and if it does not impose undue hardships on the employee or disregard the interests of the public." *MedServ Int'l, Inc. v. Rooney*, 2006 WL 8457083, at *4 (D. Md. 2006) (Williams, J) (internal citation omitted). To enforce a restrictive covenant under Maryland law, "(1) the employer must have a legally protected interest, (2) the restrictive covenant must be no wider in scope and duration than is reasonably necessary to protect the employer's interest, (3) the covenant cannot impose an undue hardship on the employee, and (4) the covenant cannot violate public policy." *Ameritox, Ltd v. Savelich*, 92 F. Supp. 3d 389, 398 (D. Md. 2015) (citing *Deutsche Post Global Mail, Ltd. v. Conrad*, 116 F. Appx. 435, 438 (4th Cir. 2004)). Maryland does not impose a different set of requirements on covenants involving doctors.

It is jarring to discuss the practice of medicine in terms of customer lists, market share, marketability, and proprietary business information. Nevertheless, the practice of medicine is a business. Increasingly, it has become a large, ever-more-concentrated, ever more competitive business. Doctors compete against other doctors, hospitals against other hospitals, and health services against other health services. Maryland extends to the business of medicine protections against unfair competition that apply to other businesses. The Court of Special Appeals has stated that In Maryland, "[t]there is no prohibition against non-competition agreements between

physicians."[3] Non-compete agreements have been enforced against doctors in federal and state cases arising under Maryland law.

As a threshold matter, I must consider whether AAPG materially breached its Employment Agreements with the nine Oncologists. In a case involving perinatologists, the Court of Special Appeals stated: "An employee defending against a claim for breach of non-competition provision by her former-employer may assert evidence that the employer had breached the employment agreement such that the employee's duty to perform under the non-competition agreement was extinguished." *Maternal-Fetal Medicine Associates of Md., LLC v. Stanley-Christian,* 2013 WL 3941970, at *7 (Md. App. 2013). The Oncologists' employment agreements impose duties on AAPG. For example, Section 8 of the AOC Agreements (**Obligations of AAPG)** lists "facilities and services" that AAPG was required to provide the Oncologists "at its sole cost and expense."

The Oncologists testified that they left their employment in large measure because of AAPG's and AAMC's actions and attitudes that made them feel devalued and threatened their effectiveness in treating patients. AAPG, they said, referred to them as a "cost center," resisted placing new drugs in the formulary, closed a convenient lab, declined to meet with them, and created the impression that AAPG and AAMC might eventually exit the field of oncology and hematology. I find that these and other actions did not materially breach the Oncologists' employment agreements. I also find that the Oncologists, while employed by AAPG, lived up to their obligation to devote their full time and attention to treating patients. They did not slack off in any way.

[3]*Maternal-Fetal Med. Associates. of Md., LLC v. Stanley-Christian,* 2013 WL 3941970, at *17 (Md. Ct. Spec. App., July 24, 2013).

I return to the law of restrictive covenants. Because AAPG drafted the agreements, they must be construed against the drafter. Non-competition agreements restrain trade and are generally disfavored. They are justified, however, when they reasonably protect the investment and good will of the former employer. A non-competition agreement involving a physician involves additional considerations. "If an agreement forces a physician to relocate outside the geographic area of the physician's practice, a patient's legitimate interest in selecting the physician of their choice is impaired."[4] AAPG bears the burden of proving, by a preponderance of the evidence, that the restrictive covenants imposed on the Oncologists meet the requirements of Maryland law.

In reviewing the reasonableness of the Oncologists' Employment Agreements with AAPG, the record provides a useful source of comparison. When the Oncologists joined MOH, they signed a Stockholder Employment Agreement (Stockholder Employee). Ex. C-13. This seventeen-page agreement was negotiated by the Oncologists with the advice of counsel. Section VI imposes detailed non-competition, non-solicitation, and confidentiality obligations on the Oncologists. The Oncologists do not contend that these provisions, which they entered into less than a year ago, are unreasonable or unenforceable under Maryland law. Hence, the AAPG employment agreements are enforceable to the extent that they track the MOH agreements.

AAPG Has a Legally Protected Interest Sufficient to Validate the Non-Competition Provisions of the Oncologists' Employment Agreements

[4] *See Mercho-Roushdi-Shoemaker-Dilly Thoraco-Vascular Corp. v. Blatchford,* 900 N.E.2d 786, 795-96 (Ind. Ct. App. 2009).

In Maryland, post-termination non-competition covenants are supported by a legally protected interest "if a part of the compensated services of the former employee consisted in the creation of the good will of customers and clients which is likely to follow the person of the former employee." *Holloway v. Faw, Casson & Co.,* 572 A.2d 510, 515 (Md. 1990) (quoting *Silver v. Goldberger*, 188 A.2d 155, 158 (Md. 1963)).

In a recent federal case decided under Maryland law, Judge Hollander granted "a motion for preliminary injunction seeking enforcement of a restrictive covenant against a physician." *Occupational Health Centers of the Southwest, P.A. v. Toney,* 2017 WL 1546430, at *1 (D. Md. 2017) (Hollander, J.) Discussing the "legally protected interest" requirement, Judge Hollander quoted from several leading Maryland cases, as follows:

> When a covenant not to compete is reasonable on its face as to both time and space, the factors for determining the enforceability of a covenant based on the facts and circumstances of the case are: "whether the person sought to be enjoined is an unskilled worker whose services are not unique; whether the covenant is necessary to prevent the solicitation of customers or the use of trade secrets, assigned routes, or private customer lists; whether there is any exploitation of personal contacts between the employee and the customer; and, whether enforcement of the clause would impose undue hardship on the employee or disregard the interests of the public."[5]
>
> In addition, "restrictive covenants may be applied and enforced…against those employees who provide unique services, or to prevent the future misuse of trade secrets, routes or lists of clients, or solicitation of customers."[6]
>
> There is a distinction "between the cases where business success is attributable to the quality of the product being sold and those where

[5] *Toney, 2017 WL 1546430, at *10-11,* quoting from *Ecology Services, Inc. v. Clym Environmental Services, LLC,* 181 Md. App. 1 (2008) (the internal quotation is from *Budget Rent A Car of Wash., Inc. v. Raab,* 268 Md. 478, 482 (1973)).

[6] *Toney, 2017 WL 1546430, at *11,* quoting from *Becker v. Bailey,* 268 Md. 93, 97 (1973)

> the personal contact of the employee with the customer is an important factor. In the latter case, the employer has a stronger need for protection against diversion of his business to the former employee who has had personal contacts with the customers which the employer lacks."[7]

In *Toney*, the former employer credibly asserted that the (i) doctor was "in a position to establish a personal relationship with" its clients and thus "it could be anticipated that those clients would follow him," and (ii) "Toney's role as State Medical Director is unique, distinct, and highly marketable to…private employers who may be seeking to engage an Occupational Medicine provider."[8] Based on the facts presented, Judge Hollander ruled: "In my view, [the former employer] has met the first element to justify enforcement of the covenant not to compete. It has set forth a legally protected interest."[9]

Recognizing that doctors provide unique services, non-competition agreements are routinely found in the employment contracts of physicians. The nine Oncologists were required to sign non-competition agreements as Shareholder Employees when they joined MOH. Ex. C-13. In their Stockholder Employment Agreements, the Oncologists explicitly agreed that their post-termination non-competition covenants are supported by a legally protected interest. The agreements provide, *inter alia:*

> VI.1 **Acknowledgements** Physician recognizes that Practice has entered into this Agreement in reliance upon the covenants and assurances made by Physician in this Agreement, that Physician's covenants in Sections 6.2 and 6.3 are reasonable and necessary to ensure the continuation of the business of Practice and to protect the goodwill, reputation and interests of Practice, and that irrevocable

[7] *Toney, 2017 WL 1546430, at *11,* quoting from *Millward v. Gerstung Int'l Sport Ed., Inc.,* 268 Md. 483, 488-489 (1973).
[8] *Toney, 2017 WL 1546430, at *12.*
[9] *Toney, 2017 WL 1546430, at *12.*

harm and damage will be done to Practice if Physician violates or breaches these covenants. Therefore, the parties mutually acknowledge all of the following:

(a) In exchange for Physician's covenants to Practice in this Agreement, Practice is furnishing to Physician, in addition to Physician's compensation, valuable consideration including, but not limited to: (i) full access to an established medical practice and a large patient base; (ii) the availability of expensive medical equipment, office equipment, and trained support staff, and (iii) specialized training, as necessary, to provide medical oncology and hematology services according to Practice's standards.

(b) If Physician practices oncology or hematology within the Practice Territory in competition with the business of Practice or solicits Practice's patients, employees, or referral sources, it would cause economic harm and loss of goodwill to Practice, resulting in immediate and irreparable loss of goodwill to Practice, resulting in immediate and irreparable loss, injuries and damage to Practice.

(c) Neither the public in general nor any patients will be adversely affected by the enforcement of covenants in this Article VI, in that other providers of similar professional medical services are readily available within the restricted area.

(d) Each and every covenant and restriction in this Article VI is reasonable in respect of such matter, length of time and geographical area; and Practice has been induced to enter into this Agreement with Physician, in part, due to the representation by Physician that Physician will abide and be bound by each of the covenants and restraints contained in this Article VI.

The Oncologists' Employment Agreements with AAPG contain similar acknowledgements that the restrictive covenants serve a legitimate interest. Ex. J-1. Section 14.5 of the AOC Agreements provide, *inter alia.:*

14.5 **Acknowledgement**. Physician acknowledges and agrees that:

A. The foregoing covenants are reasonable and necessary to protect AAPG's and AAHS's lawful economic interest in its patients and services….

B. The restrictions in this Agreement are reasonable and necessary, in terms of both scope and duration, to protect legitimate interests of AAPG and AAHS….

The Oncologists testified that they signed their Employment Agreements with AAPG despite their belief that the restrictive covenants in them are invalid and unenforceable. I find that the Oncologists' subjective beliefs, which contradict the agreements they signed, are irrelevant. The restrictive covenants rise or fall on their reasonableness. In any event, none of the Claimants explained why MOH has a legally protectable interest in the goodwill generated by their services, but AAPG and AAHS do not.

I find that AAPG has a legally protected interest in the goodwill that the Oncologists were compensated to create during their long tenure with AAPG and AAMC. After they were hired, the Oncologists' patient growth surged, then was steady and consistent year after year. The Oncologists' exemplary education, personal skill, and diligence is largely responsible for this growth. The patient growth is, however, also attributable to the strong financial and strategic investment made by AAPG and AAMC in the oncology practice, by the Oncologists' access to their employer's physician referral network, by the hospital's branding efforts, and by the other professionals supplied by AAPG and the AAMC to support the oncology practice. This support cadre includes surgical and radiation oncologists, nurse practitioners, nurse navigators, social and financial counselors, and business executives.

I point to two instructive cases. The first, *Maternal-Fetal Medicine Associates of Md., LLC v. Stanley-Christian,* 2013 WL 3941970 (Md. App. 2013), was decided by the Court of Special Appeals of Maryland. Maryland's intermediate appellate court upheld a post-termination non-competition clause that covered a doctor specializing in at-risk pregnancies. The court found that the departing physician provided unique services, and that she was in a position to exploit her

personal contacts with patients. Hence, the court found that the former employer "had legitimate business interests in, for example, its patient list, that warranted protection."

The second case, although out-of-state, is pertinent. *Mercho-Roushdi-Shoemaker-Dilley Thoraco-Vascular Corp. v. Blatchford*, 900 N.E.2d 786, 796 (Ind. Ct. App. 2009). The court ruled that the former employer, a medical practice, had a legitimate interest deserving protection by the restrictive covenant. "Here, MSRD presented evidence that it spent eight years and several million dollars establishing its practice in Terre Haute before bringing Blatchford and Ceiutat in from out of state. As such, it has a legitimate interest to be protected."[10]

Hence, I rule that AAPG has a legally protected interest sufficient to enforce the post-termination non-competition provisions against the Oncologists.

Are the Restrictive Covenants in the Oncologists' Employment Agreements No wider in Scope and Duration Than is Reasonably Necessary to Protect AAPG's Interest?

The Practice of Medicine

The nine Oncologists argue that the use of the phrase "practice of medicine" in their respective Employment Agreements is overly broad. Section 14.3 **Following Term** of the AOC Agreement provides: "Physician agrees that for a period of two (2) years following termination of this Agreement, Physician **shall not practice medicine in the Territory** as an employee of, or contracted provider with…." (emphasis added) Claimants argue that the use of the phrase,

[10] The *Blatchford* court cited with approval another Indiana case involving a doctor who had left a clinic. "The members of the Clinic who spent years and money developing the Clinic had a legitimate and realistic desire to protect not only their investment in Dr. Primus but also to restrict her competition with them once she left the Clinic. They have a protectable interest in enforcing the covenant against Dr. Primus[.]" *Harris v. Primus,* 450 N.E.2d 80, 85 (Ind. Ct. App. 1983), quoted at 900 N.E.2d 786, 796.

"practice of medicine" is overly broad and, therefore, renders the covenant unenforceable. Each of the Oncologists, they argue, is licensed to practice medicine generally. The non-competition clauses would preclude them from practicing, for example, surgery or obstetrics. A reasonable covenant, Claimants contend, would have specified their medical specialty, oncology and hematology. In that regard, the post-termination non-competition clauses of Claimants' Stockholder Agreements with MOH limit the type of practice covered. Section VI.2 (**Non-Competition)** includes the following carve out: "nor shall it [the covenant] include the practice of any field of medicine that does not involve hematology, oncology, or any supervision, administration or prescribing of chemotherapy (including but not limited to internal medicine.)"

I agree that a better drafted non-competition clause would have specified internal medicine, oncology, and hematology as the prohibited practice areas. Several reported cases involve contracts that were tailored to the doctor's practice. For example, in *Ballesteros v. Johnson,* 812 S.W. 2d 217, 219-20 (Mo. Ct. App. 217), the contract at issue was nuanced and prohibited the doctor from "engag[ing] in general cardiology and critical care, cardiology and critical care consulting, heart catheterizations, echocardiography, Holter monitoring, electrocardiogram interpretations, or exercise stress testing, at or within the following described hospitals…." In *Cardiovascular Institute of the South v. Abel,* 2015 WL 1019500 (La. App. 2017), the covenant specified that the doctor could not, for two years following the end of his employment, "carry on or engage in the business of the practice of medicine in the sub-specialty of cardiology in the Parishes of…." In *Occupational Health Centers of the Southwest, P.A. v. Toney,* 2017 WL 1546430, at *12 (D. Md. 2017) (Hollander, J.), the non-competition clause applied to only one field of medicine, occupational medicine. Judge Hollander wrote: "Significantly, Dr.

Toney is not precluded from working as a doctor anywhere in the State, so long as it is not in the field of occupational medicine."

The lack of precision in the AAPG agreements is not a fatal flaw, however. Clauses using the phrase "practice of medicine" have been upheld when applied to medical specialists. For example, in *Maternal-Fetal Med. Assocs. of Md., LLC v. Stanley-Christian,* a case applying Maryland law, the physician, a perinatologist, practiced a sub-specialty of obstetrics concerned with providing care during high-risk pregnancies. The non-competition provision, which was upheld, prohibited the physician from practicing medicine in Montgomery County, Northwest Washington D.C., and/or within 20 miles of any Maternal-Fetal office for a two-year period following the termination of her employment for any reason. 2013 WL 3941970, at *17-18. Another pertinent case, although not arising under Maryland law, is *McMurray v. Bateman.* The doctor was a surgeon. The covenant, which was upheld, prohibited him from practicing medicine or surgery for a three-year period within a 50-mile radius of Forest Park, Georgia. 144 S.E.2d 345 (1965).

Moreover, the Oncologists' practices were not limited to oncology and hematology. A more precise definition of their practice would cover internal medicine as well as oncology and hematology. Oncology and hematology are subspecialties of internal medicine. Six of the Oncologists are, or were, board certified in internal medicine, and all were required, as part of their training, to complete a residency in internal medicine. Their cancer patients experience complications such as infections and pneumonia, that, in another context, would be treated by an internist. The Oncologists can, and do, treat such complications. Moreover, Dr. Selonick

maintained a small internal medicine practice throughout his employment with AAPG. Hence, a broader definition than just oncology and hematology is justified.

Finally, there is no credible evidence that the Oncologists would have delivered babies or repaired damaged knees during the non-competition period. They were trained in the sub-specialties of oncology and hematology, they practiced at AAPG and AAMC in those specialties, they were hired by MOH to practice in those specialties, MOH provides oncology and hematology services exclusively, and AAPG and AAMC do not seek to enforce the Oncologists' non-competes outside the sub-specialty of oncology and hematology.

Hence, I find that the use of the phrase "practice of medicine" does not invalidate the non-competition provisions of the Oncologists' Employment Agreements.

The Validity of The Two-Year Non-Competition Clauses

Two years is a fairly standard non-competition period for professionals such as the Oncologists.

When they began their respective employment with AAPG, all of the Oncologists agreed to a two-year non-competition period. For example, the AOC Agreements provide in Section 14.3 that, "Physician agrees that **for a period of two (2) years following termination** of this Agreement, Physician shall not practice medicine in the Territory…." Ex. J-1. (emphasis added)

The Oncologists' employment agreements with MOH also include a two-year non-competition period. Section VI.2 (**Non-Competition**) provides: "Physician, during the period of Physician's employment by Practice and **for a period of two (2) years following termination** of Physician's employment…shall not, directly or indirectly…engage in or participate in any business or practice within the Practice Territory that is in competition in any manner whatsoever with

the business of Practice." Ex. C-13. (emphasis added). Dr. Haggerty testified that all 43 physicians employed by MOH, including himself, are subject to a two-year non-compete provision.

In Section 14.5 of the AOC Agreements, each of the signatory Oncologists agreed that two- years was a reasonable period. For example, in the AOC Agreements they "acknowledge[] and agree[] that…B. [t]he restrictions in this Agreement are reasonable and necessary, in terms of both scope **and duration,** to protect legitimate interests of AAPG and AAHS….[and] Physician expressly and irrevocably waives any claim to the contrary as to each of these points of agreement." (emphasis added) Ex. J-1.

In their Employment Agreements with MOH, the Oncologists also agreed that two years was reasonable. Section V1(d) recites: "Each and every covenant and restriction in this Article VI is reasonable in respect of such matter, length of time and geographic area; and Practice has been induced to enter into this Agreement with Physician, in part, due to the representation by Physician will abide and be bound by each of the covenants and restraints contained in this *Article* VI."

Two-year non-competition periods have been regularly upheld under Maryland law. "Maryland has consistently upheld two-year limitations on employment with competitors as reasonable." *Padco Advisors, Inc. v. Omdahl*, 179 F. Supp. 2d 600, 606 (D. Md. 2002). Other Maryland cases include:

Gill v. Computer Equipment Corp., 266 Md. 170, 180 (1972). When validating a two-year restrictive covenant, the Maryland Court of Appeals agreed with the finding of the trial court: "The trial court here found that the restrictive covenant was valid, the agreement being reasonable as to time and scope."

NaturaLawn of America, Inc. v. West Group., LLC, 484 F. Supp. 2d 392, 400 (D. Md. 2007) The court wrote: "Finally, a term of two years is a reasonable time period for the [non-competition] restriction under Maryland law.").

Occupational Health Centers of the Southwest, P.A. v. Toney, 2017 WL 1546430, at *12 (D. Md. 2017) (Hollander, J.) In a case involving an occupational medicine provider, the Court wrote: "As to the second element, scope and duration, the Agreement provides that the length of the non-compete term is two years. 'Maryland has consistently upheld two year limitations on employment with competitors as reasonable.'…Thus, under *Padco,* 179 F.Supp. 2d at 606, the duration is reasonable.")

Maternal-Fetal Medicine Associates of Md., LLC v. Stanley-Christian, 2013 WL 3941970 (Md. App. 2013). A two-year post-termination non-compete was upheld against a perinatologist.

Courts of other states have upheld restrictions of two-years or longer against doctors. *See Mercho-Roushdi-Shoemaker-Dilley Thoraco-Vascular Corp. v. Blatchford,* 900 N.E.2d 786 (Ind. Ct. App. 2009) (three-year covenant upheld against a heart surgeon); *Cardiovascular Institute of the South v. Abel,* 2015 WL 1019500 (La. App. 2017) (two-year covenant upheld against a cardiologist); *Retina Services, Ltd. v. Garoon,* 538 N.E. 2d 651 (Ill. App. 1989) (upholding a two-year covenant against an ophthalmologist), and *McAlpin v. Coweta Fayette Surgical Associates, P.C.,* 458 S.E.2d 499 (Ga. Ct. App. 1995) (a restriction of two-years enforced against a surgeon).

Claimants point out that the post-termination non-competes of the seven Oncologists AAPG hired to replace the Claimants are limited to one-year. Moreover, the non-competes in some of the reported cases involving doctors are limited to one year only. *See, e.g., Harris v. Primus,* 450 N.E.2d 80 (Ind. Ct. App. 2009), and *Ballesteros v. Johnson,* 812 S.W. 2d 217 (Mo. Ct.

App. 1991). These points do not render the two-year restriction the Oncologists agreed to unreasonable. If they did, the two-year restrictions on their contracts with MOH would also be unenforceable.

Factually, two years is reasonable because cancer patients generally remain active for at least five years.[11] Moreover, MOH specializes in the practice of oncology and hematology, and the Oncologists do not contend that the two-year non-competes in their MOH contracts are invalid.

Hence, I find that the two-year restrictions in the Oncologists' employment agreements with AAPG is reasonable and enforceable.

The Territorial Restrictions on the Oncologists

The non-competition clauses in all nine of the Oncologists' Employment Agreements cover the same Territory. The bounds of the Territory encompass 103 zip codes. Thirty (30) of those zip codes constitute AAMC's Primary Service Area as defined by the State of Maryland's Health Services Cost Review Commission ("HSCRC"). A Primary Service Area is the geographic area in which 60% of the patients discharged from a hospital reside. Ex. R-79. AAMC's Primary Service Area encompasses most of Anne Arundel County as well as portions of Prince George's and Queen Anne's Counties.

A hospital's Extended Service Area is the geographic area in which 80% of the patients discharged from the hospital reside. AAMC's Extended Service Area includes its Primary Service Area plus an additional sixty-five (65) zip codes. AAMC's Extended Service Area encompasses all of Anne Arundel, Calvert, and Queen Anne's Counties, as well as sizeable portions of Prince

[11] *See* Respondents' Post-Hearing Brief at p. 5, fn. 4.

George's, Talbot, Caroline, and Kent Counties, small portions of Howard and Baltimore Counties, and a small portion of Baltimore City.

AAMC's Extended Service Area includes 95 zip codes. The remaining eight zip codes (103 – 95 = 8) encompassed by the Territory represent areas into which AAPG "hoped" to expand.

By signing their Employment Agreements, the Oncologists expressly agreed that the Territory was reasonable in scope. Most were represented by counsel. The post-termination provisions, including duration and geographic scope, were negotiated terms. Their employment agreements were not contracts of adhesion. Testimony from the Oncologists that their attorney considered the non-competes to be unenforceable is inadmissible. Because the attorney did not testify, his or her advice is hearsay. Moreover, because the attorney did not testify, AAPG was not permitted discovery into the advice he or she gave the Oncologists.

The Practice Area covered by the Oncologists' non-completion clauses in their agreements with MOH is potentially smaller. Section VI.2 (**Non-Competition)** states: "The term '**Practice Territory'** means the geographic area within a radius of ten (10) miles of any existing or future office location or facility at which Physician regularly provided clinical services for at least two hundred (200) hours during the twelve (12) months preceding the termination of Physician's employment." Ex. C-13.

I use the term, "potentially" because an Oncologist might practice at more than one office for the required two hundred (200) hours. If so, the proscribed post-termination Practice Area would include a ten (10) mile radius from all qualifying offices. According to its web site, MOH has twelve (12) offices in Maryland.

Returning to Claimants' non-competes with AAPG, a 10-mile radius from Annapolis encompasses less than the Primary Service Area. A 20-mile radius from Annapolis encompasses more than the Primary Service Area, but less than the Extended Service Area. Ex. R-79, slides 2 and 4. The parts of the Extended Service Area that a 20-mile radius does not include are principally Calvert County and a section of the Eastern Shore.

The territorial reach of the Oncologists' non-competes with AAPG must be measured in terms of the case law. The most pertinent Maryland case is M*aternal-Fetal Medicine Associates of Md., LLC v. Stanley-Christian,* 2013 WL 3941970, at *17-18 (Md. App. 2013). The covenant prohibited Dr. Christian "from practicing medicine in Montgomery County, Northwest Washington DC, and/or within 20 miles of any Maternal-Fetal office for a two year period following the termination of her employment for any reason…." In upholding the restrictive covenant, the Maryland Court of Special Appeals ruled that "the geographic scope of the Non-Competition Provision, twenty miles, is quite limited, and its duration, two years, is not unreasonable." The appeals court also quoted with approval the trial court's ruling that granted summary judgment to the former employer: The trial court stated:

> In our case, this was a negotiated non-compete contract of employment and non-compete clause between the parties, both parties having attorneys. Both parties deem that this non-compete was necessary for the protection of the parties and of the business.
>
> There are limitations in this which are reasonable, being the geographic [scope and] in time. There doesn't appear to me to be anything unreasonable about the geographic or time restrictions on this, and therefore…I find that the terms of this non-compete clause are reasonable, and therefore, are subject to be enforced by the defendant in this case.

In affirming the trial court on this point, the Court of Special Appeals wrote: "We conclude that the court properly applied the law to the undisputed facts."

Cases from other jurisdictions have approved substantial geographic restrictions.

These include:

Harris v. Primus, 450 N.E.2d 80, 85 (Ind. Ct. App. 1983). The court upheld a covenant that prohibited the practice of medicine or surgery within a 50-mile radius of a clinic. It wrote: "The undisputed evidence showed that the Clinic's patient service area was at least a 50 mile radius. The covenant was reasonable."

Retina Services, Ltd. v. Garoon, 538 N.E. 2d 651, 654 (Ill. App. 1989). The court upheld a five- hospital restriction. "The supreme court has found to be reasonable geographic limitations in medical practice cases which were far broader in scope than the five-hospital limitation here." As noted by the *Garoon* court, the limitations upheld by the state supreme court included a "3-year prohibition from practicing all medicine within the City of Rockford and surrounding radius of 25 miles," and a "5-year prohibition on practicing medicine within a 25-mile radius of Kankakee." The court observed: "The sole covenant not-to-compete in medical practice cases found by the supreme court to be unreasonable involved a covenant far broader in scope than the one in the case at bar."

McAlpin v. Coweta Fayette Surgical Associates, P.C., 458 S.E.2d 499, 502 (Ga. Ct. App. 1995). The intermediate appellate court upheld the non-competition clause of an employment contract between a medical corporation and its physician employee that imposed a ten-county geographical restriction. The professional corporation had patients in all ten counties, although "the bulk of its patients" were from two counties. The doctor in charge of the corporation testified to his belief that a newly approved hospital would expand his professional corporation's opportunities and patient base. The intermediate appellate court relied on a decision in which the Georgia Supreme Court wrote: "'[t]he territorial limitation of the covenant was, according to

precedents set by this court, not too broad if the territory included was that throughout which the plaintiff generally practiced, although not necessarily in every part of the area included, including territory over which he had reasonable prospects of extending his practice.'" (citations omitted). Discussing the state supreme court's decision, the intermediate appellate court observed: "There, the Supreme Court approved the restriction of medicine and surgery by a doctor/employee within a 50-mile radius of Forest Park, Georgia, for a three-year period."

Applying the precedent to the facts, I find that the territory covered by the Oncologists' non-competes was reasonable when the AOC physicians were hired. The Territory was not constructed arbitrarily. It encompasses two areas, the Primary and Extended Service Areas. These areas were recognized by a Maryland Commission, the HSCRC, as defining the overall "service area" of AAHC. The Territory also included eight (8) zip codes into which the hospital reasonably hoped to expand. *McAlpin* recognizes the legitimacy of including a reasonable expansion territory.

When the Territory was originally calculated in 2009, AAPG and AAMC did not have historical oncology patient numbers. Mr. Odenwald assumed that oncology patients would track hospital discharges generally and mirror the statistics undergirding the primary and extended service areas.

Although the Territory was reasonable when the AOC Employment Agreements were negotiated and signed, the passage of time has altered the demographics. In 2019, just over 80% of AAMC's oncology patients were located in the 30 Primary Service Area zip codes.[12] Thus, in 2021, it is unnecessary to protect AAPG and AAMC's investment in the Oncologists, and

[12] *See* Respondent's Post-Hearing Brief at p. 8, fn. 7.

the goodwill they were hired to create, by extending the protected Territory beyond the Primary Service Area.

Under Maryland law, I have the authority to "blue pencil" the Territory down to a reasonable area if two conditions are met. First, I would decline to exercise that authority if the Territory was unreasonably large in the first place. An employer should not be permitted to craft an unreasonable non-compete, forcing the former employee to bring suit in order to reduce it to reasonable bounds.[13] Many former employees lack the resources to challenge an unreasonable non-compete in court.

Second, a judge or arbitrator cannot re-write the non-compete; he can only strike language to reduce the covenant to reasonable limits. *See Cytimmune Sciences, Inc. v. Paciotti*, 2016 WL 4699417, at *4 (D. Md. 2016) (Grimm, J.) ("Maryland law permits courts to preserve otherwise unenforceable non-compete agreements by excising overly broad terms. But under this 'blue pencil' approach, 'a court may not rearrange or supplement the language of the restrictive covenant.'") (internal citation omitted). *See also, Deutsche Post, 116 Fed. Appx.* 435, 439 (4th Cir. 2004) ("A court can only blue pencil a restrictive covenant if the offending provision is neatly severable." "Maryland courts have excised restrictions that render a covenant overbroad only in circumstances in which the restrictions are contained in a separate clause or separate sentence."), and *Ameritox, Ltd. v. Savelich,* 92 F.Supp.3d 389, 400 (D. Md. 2015) (A court

[13] I appreciate that AAPG has known the actual patient-location statistics for years. It could have decreased the Territory, but did not. This is a material weakness in AAPG's case. Nevertheless, AAPG is and AAMC are entitled to reasonable protection of their goodwill and investment in the Oncologists. Using "blue pencil" authority, I can reduce the Territory to proper bounds.

may not strike the dominant language or words from a single sentence restrictive covenant, "leaving only a narrower iteration of the original, broader restriction.")

In our case, the Territory can be blue penciled. In the AOC Employment Agreements, for example, Section 14.3 states that, following his term, "Physician shall not practice medicine in the Territory." Exhibit 14.1 defines the Territory as a group of individually numbered zip codes. Blue penciling can be achieved by crossing out all of the zip codes save those in the Primary Service Area. All of the Oncologists' Employment Agreements will be blue penciled accordingly.

The Non-Competition Clauses Neither Impose an Undue Burden on The Oncologists, Nor Do They Violate Public Policy

With respect to Drs. Taksey, Graze, Selonick, Werner, and Garg, the clauses would impose no hardship because their agreements have a buy-out (liquidated damages) provision. In the event the clauses are enforceable against these doctors, MOH and U.S. Oncology have agreed to pay the buy-out sums on their behalf. These doctors are practicing in Annapolis within the Territory.

Drs. Tweed, Weng, Goldrich, and Bridges have no buy-out provision in their Agreements. Nevertheless, they are employed by MOH and are working at MOH's offices in Clinton, Maryland, which is outside the restricted Territory. Hence, they have suffered no undue hardship.

There is no harm to the public because there is no shortage of oncologists in the Territory. Drs. Taksey, Graze, Selonick, Werner and Garg are all practicing in Annapolis. The covenants do not inconvenience their patients. If the patients of Drs. Tweed, Weng, Goldrich, and Bridges find it inconvenient to drive to Clinton, they can switch to one of the doctors practicing at MOH's

Annapolis office. They could also switch to one of the seven (7) oncologists hired by AAPG to replace the nine (9) who left.[14]

Whether the Restrictive Covenants of Drs. Taksey, Graze, Selonick, Werner, and Garg Prohibit Their Employment with MOH in the Restricted Territory

The employment agreements signed by Drs. Taksey, Graze, Selonick, Werner and Garg provide in relevant part:

> 14.3 Following Term. Physician agrees that for a period of two (2) years following termination of this Agreement, Physician shall not practice medicine in the Territory as an employee of, or contracted provider with:… (ii) any medical practice or other entity or organization any of whose principals, employees or contractors provides professional clinical or administrative services to a healthcare system or hospital, or any affiliate of a healthcare system or hospital, that provides services in competition with AAPG or AAHS.

Exhibits J-1, J-2, J-3, J-4 and J-6 at Section 14.3.

Under their Employment Agreements, the doctors are prohibited for two (2) years from practicing medicine "as an employee of" or "contracted provider with" "any affiliate of a healthcare system or hospital that provides services in competition with AAPG or AAHS."

The agreements define "an affiliate of a healthcare system or a hospital" as any "entity in which a healthcare system or a hospital, directly or indirectly, whether by means of ownership, voting rights, contract or otherwise, holds any legal or equitable interest or title, share of profits or right to participate in governance."

[14] I appreciate that oncologists are not fungible, and that the necessity of switching doctors can be disconcerting to any patient, especially a cancer patient. Nonetheless, the case law defines public policy in terms of the availability of doctors able to treat a patient living in a restricted territory.

The parties dispute whether MOH and U.S. Oncology are "affiliates" of a "healthcare system or hospital." This issue need not be decided because the post-termination non-competition provisions of these doctors do not apply because they were terminated without cause.

The Non-Competition Clauses of Drs. Tweed, Weng, Goldrich, and Bridges Prohibit Their Employment with MOH in the Restricted Territory

The post-termination covenants applicable to these doctors lack the complexity of the AOC covenants. They provide that for two (2) years post-termination, these four Oncologists: "shall not (a) practice medicine directly or indirectly, as an owner, employee, consultant, or in any other capacity, engage in the practice of medicine within AAPG's Primary Service Area as outlined on Exhibit 14."[15] The Oncologists are not in breach of their restrictive covenants because they have been practicing in Clinton, Maryland, which is outside the restricted territory. For the year remaining on their covenants, they may practice anywhere outside the 30 zip codes.[16] They may not practice within AAMC's Primary Service Area, however.

The Non-Solicitation Covenants, Which Ban the Solicitation of All Current and Former Patients of AAPG, or Family Members of Those Patients, Are Unenforceable Because They Are Over-Broad

The patient non-solicitation provision in each of the Oncologists' Employment Agreements uniformly provide that they may not, for a period of two (2) years: "Actively solicit for treatment (or aid or cooperate with others in actively soliciting) *any former or existing*

[15] Confusingly, the Primary Service Area as defined in their employment agreements is equivalent to the Territory in the AOC employment agreements.

[16] The restrictive covenants of the "Clinton 4" do not include a "private practice carve-out."

patient (or member of any patient's household) of AAPG." Exhibits J-1, J-2, J-3, J-4, and J-6 at §15.1.A; Exhibits J-5, J-7, J-8, and J-9 at § 15.1 (emphasis added)

Three aspects of the patient non-solicitation provision render it unenforceable. First, it is not limited to patients of the Oncologists or even oncology patients. It covers any former or existing patient of AAPG (for instance, orthopedic patients), most of whom were never treated by the Oncologists. Second, it covers anyone who happens to live with a patient. Third, AAPG notified the Oncologists' patients of their change of affiliation. The patients have been allowed to follow the Oncologists to MOH. The Oncologists have the right to discuss their change of affiliation with their patients. This scenario creates insuperable difficulties in determining what constitutes "solicitation." For these reasons, I rule that the patient solicitation provisions of the Oncologists' Employment Agreements are void.

None of the Oncologists Violated Their Restrictive Covenants By Accepting Employment with MOH During Their Tenure With AAPG

The Oncologists signed Shareholder Employment Agreements with MOH in July 2020, after having received notice from AAPG that their employment would terminate on October 22, 2020. AAPG terminated the Oncologists because of their "intention" to join MOH after their six (6)-months' notice period had ended. The Shareholder Employment Agreements did not become effective until October 23, 2020, meaning that the Oncologists did not become employees of MOH until after their employment with AAPG had terminated. Under the facts

and circumstances of this case, I rule that the Oncologists did not violate their restrictive covenants by signing the Shareholder Employment Agreements.[17]

Drs. Taksey, Graze, Selonick, Werner, Garg, and Bridges Were Terminated by AAPG Without Cause. Hence, Their Non-Competition Clauses, as Set Forth in Section 14.3, Are Unenforceable

Section 14.3 of the AOC Employment Agreement ends with the following sentence. "The restrictions set forth in this **Section 14.3** shall not apply if AAPG terminates this Agreement without cause by giving notice to Physician pursuant to **Section 9.1** at any time." (emphasis in original) Section 9.1 **Termination Without Cause** provides: "Either party may terminate this Agreement upon six (6) months' advance written notice to the other; provided, however that neither party may deliver such notice prior to the expiration of the Initial Term." (emphasis in original)

To terminate without cause, therefore, two conditions must be met. First, the party must give "written notice;" oral notice does not count. Second, the party must give six (6) months advance notice.

Two writings are candidates as "written notice." The first is Dr. Weng's email of April 6, 2020 to Dr. Schwartz, Dr. Riker, Mr. Odenwald, and Mr. Meisenberg. Attached to the email was a letter to Dr. Schwartz, which Dr. Weng characterized as "our proposal to join Maryland Oncology Hematology…." The letter uses language indicating that the Oncologists had a "unified intention" to leave AAPG and join MOH. This language includes:

[17] It is unclear whether the Stockholder Employment Agreements were enforceable in any respect until October 23, 2020. That would seem to be the case. Nevertheless, the Oncologists did not become employees of MOH until their employment with AAPG had ended. A departing employee may prepare to compete against his employer, so long as he does not actually compete or otherwise breach his duty of loyalty. Hence, the date on which the Oncologists joined MOH as employees is determinative.

- "We believe that our proposal to join Maryland Oncology Hematology will substantially advance the interests of Luminis Health, DCI, the CCN and most importantly-the needs of our community."
- "Our Assessment of Needs and Our Proposed Action."
- "We think that we can advance this goal for Luminis, with the unified intention of our nine physicians to leave Anne Arundel Physicians Group and to join Maryland Oncology Hematology (MOH). We hope to serve Luminis as the MOH Annapolis area division, implemented in the next 6-9 months."
- "As we move to MOH…."
- "However, as we move to MOH…."
- "We look forward to productive discussions of the process for implementing this new relationship."
- "As MOH physicians, we will have greater resources…."

As of April 6, 2020, the Oncologists, MOH, and U.S. Oncology had engaged in serious discussions for the doctors to leave AAPG and join MOH. The evidence supporting this proposition includes the following:

- By February 24, 2020, MOH and US Oncology had presented the Oncologists with an offer to leave AAPG and join MOH. Ex. R-82.
- In a February 26, 2020 email to MOH's Executive Director, Dr. Graze stated that he was "as enthusiastic as my other partners about pursuing plans to leave AAMC and join MOH/USO." Ex. R-10.

- On deposition, Dr. Graze testified that by late February of 2020, Claimants (other than Dr. Selonick) were "disgusted" with AAMC and AAPG and were "ready to go."
- In early March of 2020, all nine Oncologists signed a Confidential Non-Binding Term Sheet with U.S. Oncology. Ex. R-12.
- U.S. Oncology prepared "Talking Points" dated March 23, 2020 in connection with the Oncologists' plan to meet with AAPG and AAMC about their decision and to "outline intent to leave AAMC employment and become part of" MOH, and to "[e]mphasize collective decision of all 9 physicians." Ex. R-15.
- By March 27, 2020, U.S. Oncology was estimating a 5–6-month transition period for the Oncologists to join MOH, including the build out of their new office in Annapolis. Ex. R-16.

The second candidate for "written notice" are the letters of April 23 and April 27, 2020 that Dr. Schwartz delivered to the Oncologists. He wrote:

- "This letter is intended to acknowledge your April 6, 2020 correspondence addressed to myself, as well as the representations made by Dr. Weng…while meeting with Peter Odenwald and Dr. Riker on April 6, 2020. Based on that correspondence and your confirmation during the April 6th meeting, we understand that you have made the decision to leave Anne Arundel Physicians Group (AAPG) and to join Maryland Oncology Hematology (MOH)."
- "As you are aware, your employment agreement has a requirement for approximately six (6) months advanced notice of your intention to terminate your employment. As such, your last day of employment will be October 22, 2020. In the near future, we

will provide you with a more formal letter explaining the logistics and timing of your transition, and your continuing obligations under your respective employment agreements."

Dr. Schwartz followed up with a second letter of April 27, 2020 addressed to each of the Oncologists. He wrote:

- "We anticipate, pursuant the notice of intent to terminate your employment that was previously provided, that the last day of your employment will be October 22, 2020. If you wish to discuss the possibility of an earlier final date of employment by mutual agreement, we will be willing to speak with you."
- "It is AAPG's sole right and obligation to notify AAPG's patients during the transition. AAPG will provide written notice to its patients regarding your transition and AAPG will make appropriate arrangements to ensure the continuity of care for AAPG's patients."
- "During the Transition Period and for two (2) years thereafter, you are contractually obligated not to practice medicine, directly or indirectly…within AAPG's primary service area as delineated by reference to the specific zip codes in your employment agreement."
- "I look forward to your anticipated compliance with all of your legal obligations during the Transition Period and thereafter."

I find that the Dr. Weng's email of April 6, 2020 did not constitute written notice as defined in Section 19.1. The email and attached proposal announce a "firm intention," but not an irrevocable decision. They do not name a resignation date. The Rubicon had not been crossed. I have taken into consideration the testimony of Dr. Riker and Mr. Odenwald concerning their meeting of April 6th with Dr. Taksey and Dr. Weng. According to them, Dr.

Taksey stated several times that the Oncologists' decision to leave AAPG had been made. This testimony is irrelevant because any statements of Dr. Taksey were oral, not written.

Written notice is a contractual requirement. The requirement of a writing is also prudent because it avoids misunderstandings. The Oncologists testified that they presented their proposal in good faith and expected AAPG to engage in further discussions. For example, Dr. Taksey testified that he did not tell Mr. Odenwald and Dr. Schwartz that he planned to resign. He said he was "in disbelief" when he received Dr. Schwartz's letters stating that his last day would be October 22. 2020. He did not decide to join MOH, he said, until July 7, 2020. The testimony of the other Oncologists was similar. For example:

- Dr. Garg testified that as of April 6, 2020 he had not made a final decision to join MOH. He was "traumatized" when he received Dr. Schwartz's letters.
- Dr. Weng testified that he did not intend his email and letter to be a notice of resignation for himself or the others. He said that Dr. Schwartz mischaracterized his email and letter as a letter of resignation.
- Dr. Tweed testified that the purpose of the April 6, 2020 email and letter was to propose a way to remove problems. It was not a letter of resignation. She did not resign her employment, she stated.
- Dr. Goldrich testified that he did not make a decision to join MOH until July 2020. He characterized Dr. Weng's letter as a "proposal" and not a "fait accompli."
- Dr. Graves testified that he did not resign; Dr. Schwartz fired him.

- Dr. Bridges testified that he did not make a decision to join MOH until July 2020. He also said that after he received the letter of termination, Dr. Reicher called him to say that he would still have a position at AAPG if he were willing to renegotiate his contract.
- Dr. Werner testified that she had not made a decision to leave AAPG for MOH on April 6, 2020. The letter of termination, she said, created "momentum" to join MOH.

I also find that Dr. Schwartz's letters of April 23 and April 27, 2020 constituted a "notice of termination" without cause within the intendment of Section 9.1. He wrote that "your last day of employment will be October 22, 2020." Hence, the non-competition provisions of Sections 14.3 do not apply to Drs. Taksey, Graze, Selonick, Werner, Garg, and Bridges. The non-solicitation covenant of Section 15 does apply, however.

Did the Oncologists Misappropriate Respondents' Confidential and Proprietary Information?

AAPG'S claim centers on Ex. J-20, AAMC Oncology and Hematology Statistics. Each month, AAPG prepared and distributed to the Oncologists a report that broke out each Oncologist's total number of hospital visits, outpatient visits, new patients seen, and WRVUs. Periodically, AAPG distributed to the Oncologists a cumulative report showing their annual totals in those categories from 2011 through the date of the Report. J-20 was the most recent report, covering both the monthly totals for 2019 and the annual totals for 2011-2019.

Both Mr. Odenwald and the Oncologists testified that these reports were prepared and distributed to the Oncologists in connection with their compensation, so they would understand the approximate amounts they had earned for the period under review. As spelled out in Exhibit 5.1 to the AOC Employment Agreements, each physician's compensation included a base salary plus a percentage share of a Compensation Pool, calculated and paid quarterly, "based on

Adjusted Clinical WRVUs and Practice Expenses of the Pooled Physicians for the immediately preceding Quarter." As defined in Exhibit 5.1, Adjusted Clinical WRVUs "means the sum of (A) actual Clinical WRVUs generated by the Pooled physicians with respect to Existing Patients, plus (B) actual Clinical WRVUs generated by the Pooled Physicians with respect to New Patients multiplied by 110%."[18]

A WRVU is a governmental term used to measure the productivity of a doctor. The AOC Agreement defines the term, in part:

> **Individual Clinical WRVUs** [I] means the workload value assigned to Physician's personally performed procedure and visit categories measured by the Resource Based Relative Value Scale and set forth in the most recent **Medicare Physician Fee Schedule** published in the Federal Register. The Clinical WRVUs for each concurrent procedural terminology (CPT) code represents the relative value of physician work (e.g., time, physical effort and skill, mental effort and judgment) **required** for that service in comparison to all other physician services. (emphasis in original)

Ex J-20 shows, for example, the following information for Dr. Garg for January 2019:

Hosp. 40
Off. Visits 237
WRVU 474.54
New Pts. 21

Ex J-20 also shows Dr. Garg's total for 2019:

Hosp. 470
Off. Visits 2,624
WRVU 5,297
New Pts. 293
% WRVU Total 11.8%

J-20 displays statistics for Dr. Garg and the other Oncologists for each year from 2011 to 2019. Dr. Taksey and Dr. Weng testified that WRVUs are a subset of RVUs. RVUs have three

[18] The Physician Compensation Formula set out in Exhibit 5.1B to the AOC Agreement is complex.

components that relate to patient visits: cost, insurance, and the doctor's productivity. With respect to the productivity factor, the doctor assigns a CPT Code to each patient visit. Exercising medical judgment, the doctor determines the appropriate code based on the complexity of the visit and the time spent. Each CPT Code has a numerical value.

The WRVU totals in Ex J-20 provides limited information. Using Dr. Garg as an example, his WRVU count for 2019 (5,297) does not tell the reader how many patients Dr. Garg saw, the patient's medical condition, the treatment Dr. Garg prescribed, the time he spent with the patient, the patient's residence, the referring physician, what AAPG received as reimbursement from the government or a private insurer, or whether the hospital was required to write off any portion of the charge.

In January 2020, Dr. Taksey provided J-20 to MOH.[19] His purpose was to provide MOH with an understanding of the Oncologists' productivity so that U.S. Oncology's finance team could develop a pro forma projecting what the Oncologists might earn if they joined MOH. AAPG, asserting that J-20 contains trade secrets, confidential and proprietary information, lodged three Counterclaims. They are:

Count I: Breach of Contract. The contracts referred to in this count are the Proprietary Information Agreement, which is part of the AOC Agreement (Ex. J-1, J-2, J-3, J-4, and J-6; Ex. 20), and the Confidentiality provision of the Tweed, Weng, Goldrich, and Bridges Agreements (Ex. J-5, J-7, J-8, and J-9 at §12).

Count II: Unfair Competition.

[19] Dr. Taksey advised the other Oncologists that he intended to provide the information to MOH and U.S. Oncology. None objected.

Count III: Violation of MUTSA, the Maryland Uniform Trade Secrets Act, Md. Code, Comml. Law Article.

My analysis will focus on MUSTA. Whether or not J-20 is a "trade secret" is essentially determinative of the other two counterclaims. MUTSA makes it unlawful for any person to disclose another's trade secret when the trade secret was acquired improperly or when the person acquired the trade secret "under circumstances giving ride to a duty to maintain its secrecy or limit its use." *See*, Md. Code, Commercial Law § 11-1201(c)(2), and 11-1203.

Section 11–1201(e) of MUTSA defines the term "trade secret" thus:

> [i]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

To determine whether information is a trade secret, Maryland courts look to the following factors:

> (1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and to [its] competitors; (5) the amount of effort or money expended…in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

LeJeune v. Coin Acceptors, Inc., 849 A.2d 451, 460 (Md. 2004).

The parties disagree whether J-20 contains trade secrets. Mr. Odenwald, Dr. Schwartz, and Ms. Bayless testified that J-20 constitutes the "business playbook" for the oncology and hematology practice at AAPG and AAMC. J-20, they said, provides a detailed nine-year retrospective of sustained growth in the oncology practice's patient volume. This information would be invaluable to a competitor such as MOH and U.S. Oncology seeking to enter a new market, they testified. The witnesses identified several competitive edges that this information provided:

- MOH and U.S. Oncology used the information to structure an offer to the Oncologists. Ex. R-82 and R-83.
- The information gave MOH and U.S. Oncology the confidence necessary to invest more than $10 million building an Annapolis-centric practice around the Oncologists. Without the data, MOH and U.S. Oncology would have assumed a larger risk.
- The information enabled MOH and U.S. Oncology to adjust their marketing and business approach to compete against AAPG and AAMC more effectively.
- In the future, the data will enable MOH and U.S. Oncology to cross check their patient growth projections against historic patient growth.

Mr. Odenwald testified that over 800 man-hours went into creating J-20, at a total cost of over $60,000. He conceded that some, but not all of the information could be obtained from publicly available sources. He estimated that the cost of hiring an outside consultant to access

the publicly available sources and compile a report would be between $400,000 and $500,000. He also doubted that all of the information could be obtained at any cost.[20]

AAPG asserts that it took reasonable steps to maintain the secrecy of the information contained in Ex. J-20. Mr. Odenwald testified that AAPG limited the distribution of the reports to those with a need to know. Those who received the reports, including the Oncologists, were covered by a confidentiality agreement. *See AirFacts, Inc. v. de Amezaga*, 2018 WL 6051419, at *9 (4th Cir. 2018).

Under three Counts of the Counterclaim, AAPG asserts that the Oncologists, by providing Ex. J-20 to MOH and U.S. Oncology, breached the confidentiality provisions of their respective employment agreements, violated MUSTA, and unfairly competed against AAPG and AAMC. Having considered the record and the law, I find that Respondent failed to sustain these claims. My reasoning includes the following points.

AAPG did not compile Ex. J-20 for marketing or business development purposes. The statistical reports were created to determine the Oncologists' compensation pursuant to the complex compensation formula in their agreement. The reports were provided to the Oncologists to show how their compensation was derived.

AAPG did not take firm steps to guard the secrecy of the information. The reports were never stamped as "confidential." The Oncologists testified that AAPG never told them that the reports were proprietary. Moreover, they were not instructed to keep the documents secure. Instead, Drs. Tweed and Taksey testified that hard copies of similar reports and RVU data were

[20] Ms. Bayless, a current HSCRC Commissioner, testified that the entirety of the information on J-20 could not be replicated from public sources.

placed on desks and conference room tables, where "they sat" for long periods. The Oncologists were not instructed to give back, safeguard, or discard the reports. Practice Manager Valerie Lehman, the AAPG employee who prepared and distributed the reports, testified on deposition that she was not advised that the information in them was confidential. *See* Lehman Dep. Extract.[21]

The parties dispute whether J-20 could be duplicated from publicly available sources. Nevertheless, it is undisputed that much of the data is publicly available from a variety of sources, including CMS and HSCRC. For example, Dr. Weng was able to obtain his personal statistics from the CMS website for the year 2018, including the number of Medicare and Medicaid patients he saw and the services he provided. Mr. Odenwald testified that the HSCRC makes available datasets that include the total number of inpatient discharges and outpatient visits for each hospital or healthcare system, identified by zip code.

Ex. J-20 was not indispensable to the decision of MOH and U.S. Oncology to hire the nine (9) Oncologists. MOH and U.S. Oncology could approximate the size and historic growth of the Oncologists' practice from other sources. For example, the Oncologists were not barred from disclosing their Employment Agreements to MOH and U.S. Oncology. They were not barred from disclosing their compensation formula and their earnings month-by-month and year-by-year. They were not barred from estimating the total number of patients they had seen month-by-

[21] On November 17, 2020, Mr. Odenwald sent each of the Oncologists by regular mail and unencrypted email to their personal accounts a letter and attachments containing their RVU data for 2020 and additional information for every oncologist and nurse practitioner for the AAPG Oncology and Hematology Division, including the newly hired replacement oncologists. This information was more extensive than that provided to MOH and U.S. Oncology. See Ex. C-14. Although Mr. Odenwald testified that his assistant made an error in sending the documents, he personally signed the cover letters, which identified the enclosures and stated that they would be sent by regular mail.

month and year-by-year. Using this information and its own experience as a well-established oncology and hematology practice, MOH (with assistance from U.S. Oncology) could have reverse engineered an accurate picture of the growth of the Oncologists' practice. The information in Ex. R-20 may have been "convenient" for MOH and U.S. Oncology, but it was not indispensable to their decision to hire and invest in the Oncologists.

Respondent also failed to make the case that the information in Ex. J-20 will assist MOH and U.S. Oncology in competing against AAPG and AAMC going forward. AAPG posits that Ex J-20 will assist its competitors in deciding whether to counter flat or slumping patient visits with additional marketing and investment. Respondent failed to prove that MOH and U.S. Oncology could not make these business decisions based on their own expertise and experience. I conclude, therefore, that the Statistical Reports lacked sustained substantial competitive value to MOH and U.S. Oncology. *See Diamond v. T. Rowe Price Assocs., Inc.*, 852 F. Supp. 372, 412 (D. Md. 1994) (Legg, J.) ("While these documents may have some utility to T. Rowe Price, there is no evidence that they have any independent economic value for anyone else.").

Hence, I find that Respondent failed to sustain its claims that Claimants misappropriated its confidential and proprietary information.

Drs. Taksey, Werner, and Tweed Did Not Breach Their Duty of Loyalty by Disclosing Proprietary Information Derived From Their Service on the Medical Oncology Executive Committee

AAPG contends that these Oncologists violated their duty of loyalty by disclosing confidential information they learned through serving on AAPG's Medical Oncology Executive Committee. In addition to the statistics discussed in the previous section, AAPG alleges that the doctors were privy to, and disclosed to MOH, AAPG's strategic plans and other financial and

proprietary information. Respondents seek compensatory damages, including the amounts paid as wages during the period in which the doctors engaged in disloyal acts, and punitive damages.

I credit the doctors' testimony that the purview of the Medical Oncology Executive Committee was medical issues incident to patient care and treatment, and that the Committee was not created to formulate or review AAPG or AAMC's business plans. I also find that AAPG failed to substantiate its claim by identifying the proprietary business information disclosed to the Oncologists. Hence, I reject this claim.

Drs. Taksey, Graze, Selonick, Werner and Garg Violated Their Common Law Duty of Loyalty to AAPG Through Their Involvement in Recruiting AAPG and AAMC Employees for MOH While They Were Employed by AAPG.

Section 14.1(B) of the Employment Agreements of Drs. Taksey, Graze, Selonick, Werner and Garg provide:

> During the Term, Physician shall not, without AAPG's prior written consent, directly or indirectly… Manage, operate or provide professional services for any individual or entity that provides services similar to, or competitive with, those services provided by AAPG or AAHS.

In addition to this contractual undertaking, the Doctors owed a duty of loyalty to AAPG while they were employed. Under Maryland law, an employee who is planning to leave his employment has the right to prepare to compete against his employer by, for instance, forming a company, meeting with investors, obtaining financing, obtaining office space, signing a lease, and purchasing equipment. *See e.g., Maryland Metals v. Metzger,* 282 Md. 31, 38-

39 (1978). Nevertheless, the departing employee, during his employment, owes a duty of loyalty to his employer. He must faithfully fulfill his work obligations to his employer; he must not compete against his employer, and he cannot undermine his employer by, for example, hiring other employees, sowing discord, or encouraging them to leave their employment.

AAPG alleges that Dr. Taksey and Dr. Werner were actively involved in interviewing and hiring AAMC employees for MOH's new Annapolis office during August and September 2020 while they were still employees of AAPG. AAPG further alleges that MOH consulted Drs. Graze, Selonick, and Garg concerning those AAMC employees it was targeting for employment and gave these doctors "final say" on candidates. AAPG maintains that these actions (i) constitute the management and operation of an entity competitive with AAMC, (ii) breached the Doctors' common law duty of loyalty to AAPG and AAMC, and (iii) caused "concrete economic losses."

MOH hired away thirteen (13) AAMC employees to work at its new Annapolis office. Ex. R-80. Mr. Odenwald testified that in the health care industry the cost of replacing an employee is one-third of that employee's annual salary. Based on that measure of damages, AAPG seeks $281,812.72 for the loss of the thirteen employees.

I find that all nine (9) Oncologists fully performed their duties as doctors during their tenure with AAPG. They continued to treat patients full-time

through their last day of employment, October 22, 2020. They did not join MOH until October 23, 2020, and MOH's Annapolis Division did not open its doors until November 2, 2020.

I find that the Oncologists did not "manage or operate" MOH while they were employed by AAPG. Their involvement in the recruitment of AAMC employees did not rise to the level of "managing or operating" a competitive business. The sole issue to be decided concerns whether the Oncologists breached their duty of loyalty by participating in the recruitment of the thirteen (13) AAMC employees who left for MOH.

In *Maryland Metals*, the Court of Appeals discussed the tightrope that departing employees must walk when they plan to open a competing business. The Court wrote:

- "This concern for the integrity of the employment relationship has led courts to establish a rule that demands of a corporate officer or employee an undivided and unselfish loyalty to the corporation." 282 Md. pp. 37-38.
- "Thus, we have read into every contract of employment an implied duty that an employee act solely for the benefit of his employer in all matters within the scope of employment, avoiding all conflicts between his duty to the employer and his own self-interest." 282 Md. p. 38.
- "A direct corollary to this general principle of loyalty is that a corporate officer or other high-echelon employee is barred from actively

competing with his employer during the tenure of his employment, even in the absence of an express covenant so providing." 282 Md. p. 38.

- "Thus, prior to his termination, an employee.... must refrain from actively and directly competing with his employer for customers and employees, and must continue to exert his best efforts on behalf of his employer." 282 Md. p. 38.
- "Once the employment relationship comes to an end, of course, the employee is at liberty to solicit his former employer's business and employees, subject to certain restrictions concerning the misuse of his former employer's trade secrets and confidential information." 282 Md. p. 38.
- "The second policy recognized by the courts is that of safeguarding society's interest in fostering free and vigorous competition in the economic sphere." 282 Md. p. 38.
- "This policy in favor of free competition has prompted the recognition of a privilege in favor of employees which enables them to prepare or make arrangements to compete with their employers prior to leaving the employ of their prospective rivals without fear of incurring liability for breach of their fiduciary duty of loyalty." 282 Md. p. 39.
- "The right to make arrangements to compete is by no means absolute and the exercise of the privilege may, in appropriate circumstances,

rise to the level of a breach of an employee's fiduciary duty of loyalty….Examples of misconduct which will defeat the privilege are: misappropriation of trade secrets; solicitation of an employer's customers prior to cessation of employment; conspiracy to bring about mass resignation of employer's key employees; usurpation of employer's business opportunity." 282 Md. p. 40 (internal citations omitted).

- "Within these broad principles, the ultimate determination of whether an employee has breached his fiduciary duties to his employer by preparing to engage in a competing enterprise must be grounded upon a thoroughgoing examination of the facts and circumstances of the particular case." 282 Md. 40.

I find that during their employment with AAPG the Oncologists were prohibited from participating in the effort to recruit AAMC employees for the new MOH Annapolis office. They should not have involved themselves to any degree. There is a clear difference between neutral preparations, such as leasing office space, and preparations that harm one's employer. Recruiting other employees to join the new venture falls squarely into the latter category.

Dr. Hagerty, Practice President and corporate representative of MOH, testified on deposition that the Oncologists played a role in staffing MOH's Annapolis office with former AAMC employees.

Q. Did the nine oncologists hired from AAPG, effective October 23rd, 2020, have control over staff hiring and compensation in Annapolis?

A. They did have – they collaborated, yes. They collaborated with the MOH team.

XXX

Q. Okay. And did the nine oncologists have control over those decisions as to staff hiring?

A. I mean, I believe the word "control" – I mean, I believe they had some input, yes.

XXX

Q. Did they have final say over the hiring of staff in the Annapolis office?

A….I believe they had final say.

Q. Okay. Did the nine oncologists hired from AAPG have final say over the compensation for the staff hiring in Annapolis?

A. I believe they did have involvement in the salary ranges, compensation ranges.

Q….Did they have final say over those compensation decisions?

A. Yes.

Tish McFadden, Director of Human Resources for MOH, and Nicole Barnes, the EHR Administrator who assisted Ms. McFadden in staffing the

new MOH Annapolis office, sought advice from the Oncologists on staffing decisions. Several examples are as follows:

- On August 6, 2020, Tish McFadden emailed Nicole Barnes, Subject: "AAMC Team Member Needing Approval." "Hi Nicole, I just received a pretty strong resume from a Senior Practice Manager who works at Anne Arundel Medical Center. Can you please let me know if I have permission from the Physicians to reach out to her or not?" Ex. R-29
- Also on August 6, 2020, Ms. Barnes emailed Dr. Werner, Subject: "FW: AAMC Team Member Needing Approval." The other Oncologists were copied on the email. "See below from Tish, thoughts? Can she reach out to applicant?" Ex. R. 29.
- On August 24, 2020, Hannah Fisher of U.S. Oncology emailed Dr. Werner, with a copy to Nicole Barnes. Subject: "AAMC Offers/Second Interviews." "Good afternoon Dr. Werner. Can you please confirm if the below candidates require a second interview or if we can move straight to an offer?" Ms. Fisher listed ten (10) employees of AAMC. Ex. R. 36.
- On August 28, 2020, Nicole Barnes emailed the Oncologists, with copies to Tish McFadden and five (5) employees of U.S. Oncology. She wrote: "I wanted to let you know we are revamping the recruitment spreadsheet to include AAMC candidate's current salary as well as

offer status and final salary….[Y]ou will be key decision makers for all Annapolis staff." Ex R. 41.

- On September 4, 2020, Nicole Barnes emailed the Oncologists regarding Jacqueline Shanahan, a candidate for a Nurse Navigator position at MOH. Ms. Shanahan was, at that time, a Nurse Navigator at AAMC. Because MOH did not have Nurse Navigators. Ms. Barnes wanted information on the position. In specific, she wanted to know:

    1. How will the role of Nurse Navigator be at Annapolis compared to the hospital? She currently works with a team and knows she would be the only one working with the 9 Oncologists.
    2. Will she be able to continue to go out into the community and meet with PCPs to get referrals for the practice? She absolutely loves this part of her job. Ex. R 50.

- Dr. Taksey responded to Ms. Barnes in an email of September 4, 2020, on which the other Oncologists were copied. He wrote: "I would envision the role would be similar to what she does now…We would absolutely want her to go out to the community to help with referrals. Ex. R. 50.
- Dr. Weng also responded to Ms. Barnes in an email of September 4, 2020, on which he copied the other Oncologists. Subject: "Re: Recruitment." He wrote: "We would love for

her to be a part of the community outreach to all caregivers and service providers-both building and maintaining those connections." Ex. R. 50.

- In an email of September 4, 2020, Ms. McFadden wrote the Oncologists. "Good evening Annapolis Physicians…Attached is an update on our positions. We have identified a little over 50% of our hires." Ex. R. 50.
- Drs. Taksey, Werner, and Bridges interviewed a candidate, Dorian Stewart, for the practice manager position at MOH. Ms. Stewart was employed at AAMC at the time.

Drs. Werner and Taksey testified that they and their colleagues avoided discussing MOH with anyone who worked with the Luminis Health System. Although this testimony is inaccurate with respect to Ms. Stewart, whom they interviewed, I credit their statements.

Nevertheless, *Maryland Metals* clearly states that a current employee may not "conspire" with a future employer to recruit fellow employees. All nine (9) of the Oncologists violated their duty of loyalty by actively assisting MOH and U.S. Oncology in their efforts to recruit employees away from AAMC. AAPG only asserts this claim against Dr. Taksey, Selonick, Werner and Garg. I find them liable, and I will hold a further hearing to discuss the subject of damages.[22]

I made this Interim Award as of April 14, 2021. This is an Interim Award and not a Final Award or a Partial Final Award. I will schedule a hearing to consider (i) damages for breach of the

[22] Under their employment agreements with MOH, the Oncologists were responsible for paying employee compensation out of their Division earnings. Hence, they had a motive to assist MOH and U.S. Oncology in hiring productive employees away from AAMC.

duty of loyalty by recruiting fellow employees, (ii) the parties' claim for an award of attorneys' fees and costs, and (iii) any other issues that have not been addressed by this Interim Award.

The above is so Ordered this 14th day of April 2021.

/s/ Benson Everett Legg
Judge Benson Everett Legg (ret.)

PROOF OF SERVICE BY E-Mail

Re: Bridges MD, et al. Benjamin B. / Anne Arundel Physicians Group LLC
Reference No. 1410008607

I, Teresa Menendez, not a party to the within action, hereby declare that on April 14, 2021, I served the attached **Interim Award (April 14, 2021)** on the parties in the within action by electronic mail at Washington, DISTRICT OF COLUMBIA, addressed as follows:

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Benjamin B. Bridges, M.D.
Carol K. Tweed, M.D.
David E. Weng, M.D., Ph.D
Jason D. Taksey, M.D.
Jeanine L. Werner, M.D.
Peter R. Graze, M.D.
Ravin Garg, M.D.
Stuart E. Selonick, M.D.

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Jeanine L. Werner, M.D.
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Ravin Garg, M.D.
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Parties Represented:
Anne Arundel Physicians Group, LLC

I declare under penalty of perjury the foregoing to be true and correct. Executed at Washington, DISTRICT OF COLUMBIA on April 14, 2021.

/s/
Teresa Menendez
JAMS
tmenendez@jamsadr.com

Medscape article.pdf
Uploaded by: carol tweed
Position: FAV

www.medscape.com

Free Now to Speak, Nine Oncologists Spill the Beans Over Firing

Roxanne Nelson, RN, BSN

March 11, 2022

Last year, nine oncologists filed a lawsuit against the Anne Arundel Medical Center (AAMC), in Annapolis, Maryland, alleging that the hospital had fired them and had refused to allow them privileges to see their patients.

Anne Arundel Medical Center

As reported at the time by *Medscape Medical News,* the oncologists said that the hospital chose profit over the needs of cancer patients, as it slashed oncology care services to cut costs.

The hospital denied any wrongdoing and alleged that the oncologists were not fired but that they had quit because they had been offered a more profitable opportunity.

At that time, the oncologists were not free to respond because of the ongoing litigation. But now that the lawsuit is over and the dust has settled, they are free to speak, and they contacted *Medscape Medical News* to tell their side of the story.

AAMC is a private, not-for-profit corporation that operates a large acute care hospital in Annapolis, Maryland. It is affiliated with Luminis Health, the parent company of the medical center. Until October 23, 2020, the nine oncologists were employed by the AA Physician Group.

The doctors are Jason Taksey, MD, Benjamin Bridges, MD, Ravin Garg, MD, Adam Goldrich, MD, Carol Tweed, MD, Peter Graze, MD, Stuart Selonick, MD, David Weng, MD, and Jeanine Werner, MD.

They are all "highly respected, board certified oncologists and hematologists, with regional and, for some, national reputations in their medical specialty. The oncologists have had privileges at AAMC for many years and their capability as physicians is unquestioned," according to the court filing made on behalf of the oncologists.

"Most of us have been in this town for decades," said Carol Tweed, MD, who served as the unofficial spokesperson for the group. "Some of us are faculty members at Johns Hopkins, and this hospital's oncology service was historically defined by our group."

AAMC has a good reputation for providing high-quality medicine, "which is what brought many of us there in the first place," Tweed told *Medscape Medical News,*

Triggered by Cost Cutting

The situation began when the hospital began cutting services to curtail costs, which directly affected the delivery of oncology care, Tweed explained. "They were also creating a very toxic and difficult interpersonal work environment, and that made it difficult to do patient care," she said. "We would go to them and let them know that we were having difficulty delivering optimal patient care because we didn't have enough staff or the resources we needed for safety — and it got to the point where we were being ignored and our input was no longer welcome."

Tweed explained that the administrators announced which patient-care services would be cut without asking for their input as to the safety of those decisions. "Perhaps the most notorious was when they shut down the oncology lab," she said. "That lab to an

oncologist/hematologist is like a scalpel to a surgeon. I need lab results immediately — I need to know if I can give chemotherapy right now, or do I need to hold a dose. The lab is intrinsic to oncology care anywhere."

There was a continuing cascade of events, and the oncology group mulled over some ideas as to how to provide optimal patient care in this increasingly difficult environment. The decision they reached was to discuss running their own practice with the hospital administrators as a means of making up for the gaps that they were now having to contend with. "As physicians, we do a lot of non-billable work, such as patient education, nighttime rounds for our cancer patients, and so on, and we told them that we would continue doing that," said Tweed. "They said that they would talk to us, but they didn't."

Within a week of sending their proposal for setting up their own practice, all nine physicians were fired. "Instead of arranging a discussion, we received termination letters," she explained. "We were terminated without cause."

As physicians, Tweed explained that they were by contract obligated to arbitrate. It dragged on for weeks and months, to the tune of hundreds of thousands of dollars in legal fees.

"The only thing we wanted was to be able to practice in this town," said Tweed. "And what is important to know is that it was never for money, and that was never our motivation for wanting to form our own practice."

Tweed was referring to the hospital's allegations that the oncologists had left their employment for monetary gain. A statement given to *Medscape Medical News* by the Luminis Health Anne Arundel Medical Center at the time stated that "this dispute started after nine oncologists left their employment to join a for-profit organization. We tried repeatedly to remain aligned with them."

The oncologists had resigned during the height of the coronavirus pandemic to "pursue lucrative contracts" with a "major pharmaceutical distribution," according to Todd M. Reinecker, attorney for Luminis Health, as reported by the *Capital Gazette* (*Medscape Medical News* reached out to Reinecker at that time but did not receive a response).

This was not the case, Tweed emphasized. "We took a great financial risk in doing this for patient care. It was pretty disgusting that was in print from the hospital's lawyer."

"The doctors anticipated Luminis Health would be unable to recruit new physicians and be forced to continue to use their services," Reinecker maintained.

In fact, the medical center hired seven new oncologists to replace them.

Noncompete Covenant

In filing their lawsuit, the nine oncologists put before the arbitrator the issue of the enforceability of the noncompete provision in their employment agreement, which prohibited the oncologists from working in the geographic area that includes the hospital. Their position was that the agreement was overly broad and thus unenforceable.

"We sign noncompete restrictive covenant contracts and we're told that they are nonenforceable, and that's the general discourse," said Tweed. "Some states don't even allow them. Well, we found out that they are very enforceable."

The arbitrator eventually determined that three of the oncologists, including Tweed, had enforceable noncompete contracts.

"During the year or so while this was all going on, I would say that 90% of my patients wanted to stay with me," said Tweed. "Patients were looking all over the place for us because, in many cases, the hospital did not tell them where to find us. In fact, they told us that we couldn't contact the patients — they said it was 'solicitation of a patient.' "

In addition, the hospital continued to put more restrictions on the doctors. Six of the nine oncologists were able to continue practicing in Annapolis, and the remaining three will be able to join them in October 2022 when their noncompete contracts expire.

Now that the hospital has seen that there was a new oncology practice in town, Tweed noted, they changed their bylaws, and they now forbid hospital privileges to every physician in that group.

"The new bylaws do not restrict all private oncologists — just specifically our group, which prevents us from being able to do rounds in the hospital," said Tweed. "If I want to see any of my patients, I have to get a visitor badge."

Tweed contends that this move was purely for financial and business reasons to keep the oncologists from their patients. This is the primary hospital where their patients would be admitted if they need hospital care. AAMC is the only hospital within a 15-mile radius, and it serves as the regional hospital for the greater Annapolis area and for many Eastern Shore communities, whose hospitals do not offer various specialty services, such as oncology care.

"This was done purely because they were finance focused and not patient care focused," Tweed emphasized. "We basically had to bargain with the hospital to let us even transfuse our patients."

Telemedicine Added to the Mix

Yet another restriction that surfaced during the arbitration involved telemedicine. Tweed explained that as soon as the hospital realized that the three oncologists planned to stay in town and that their patients wanted to continue receiving care with them, they put telemedicine on the chopping block.

As if the restrictions and removal of hospital privileges wasn't enough, the hospital decided to go after telemedicine during arbitration, Tweed said. If patients lived in any of the restricted ZIP codes, they were forbidden to conduct virtual visits with them.

"This isn't ethical, but they tried to do everything to keep us from seeing our patients," she said. "This is patient choice, but they were telling patients that if you live in any of these ZIP codes, you cannot do telemedicine if you choose Carol Tweed as your doctor," Tweed said.

Of course, a patient isn't bound by the arbitration and can see any doctor, but Tweed explained that the hospital threatened to come after her with a lawsuit.

One of the other physicians, Stuart Selonick, MD, told *Medscape Medical News* that he wasn't quite sure how the idea of prohibiting telemedicine even came up. "There is little precedence for telemedicine in the US," he said. "They've extended the restrictions to telemedicine, and this is a new legal boundary, and it was new to the judge. But they made it part of the definition of the restrictive covenant. But to fight it would mean another lawsuit," he added.

A separate lawsuit had previously been filed in an effort to regain hospital privileges, but the decision was made not to continue, owing to the amount of litigation it would involve.

"We can't spend a lifetime and millions on another legal battle," said Tweed. "We don't have the corporate legal pool that the hospital has, and they know it."

Patients have written endless letters supporting the doctors, Tweed said, but to no avail, as the hospital did not change course.

Litigation is now completed, and in about 9 months, the remaining three physicians will be able to rejoin their colleagues and put this behind them as best they can.

"The hospital knows that they harmed patient care for financial gain — that's the tagline," said Tweed.

Approached for a response, Justin McLeod, spokesperson for Luminis Health, said that they are "pleased with the outcome of the case and the resolution agreed to by both sides. This agreement ensures patient access and continuity of care for patients with cancer. These providers have access to their patients' electronic medical records, can order outpatient services, and attend quarterly cancer committee meetings with other providers.

"Our focus is the future of cancer care for our community. Luminis Health Anne Arundel Medical Center is committed to providing patients with high quality, comprehensive cancer care that is accessible to all," he added.

For more from Medscape Oncology, join us on Twitter and Facebook.

Credits:

Images: Luminis Health

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HB1388SenateTestimony.pdf
Uploaded by: Christine Catterton
Position: FAV

Anne Arundel County Farm Bureau
2857 Davidsonville Road
Davidsonville, MD 21035
annearundelcountyfarmbureau@gmail.com

March 27, 2024

Senator Pam Beidle, Chairperson
Senate Finance Committee
11 Bladen Street
Annapolis, MD 21401

Favorable
HB1388/SB1182
Labor and Employment– Noncompete and Conflict of Interest Clauses– Veterinary and Health Care Professionals

Dear Senator Beidle,

I am writing on behalf of the Anne Arundel County Farm Bureau to request a favorable report from the Senate Finance Committee for HB1388/SB1182. The Anne Arundel County Farm Bureau represents over 800 farming families.

Agriculture is Maryland's leading commercial industry grossing over 8 billion dollars to the economy. With over 100,000 horses in Maryland, veterinary care is of the utmost importance to protect that valuable asset. Currently, the only Board Certified equine surgeon that accepted emergencies after hours is held to a non-compete contract. The veterinarian, Dr. CJ Caniglia is no longer able to provide those critical services to the area, forcing equine owners to transport sick or injured horses to Virginia and Pennsylvania to access their emergency health care. Time is critical on these cases and absolutely a determining factor in whether an outcome is positive or negative. Maryland needs this veterinarian.

Non-compete contracts are against the public interest to obtain the health care of their choice. It should not be a business that chooses where that care can be obtained. Doctors and veterinarians are in a shortage. Non-competes should not be an option to hold back the forward movement of our health care standards.

We ask that the Senate Finance Committee provide a favorable report on HB1388/SB1182 to allow the public to choose their health care professionals, not non-compete contracts.

Sincerely,

Christine Catterton

Christine Catterton, President
Anne Arundel County Farm Bureau

C.J. Caniglia Senate Testimony.pdf
Uploaded by: Christopher Caniglia
Position: FAV

March 28, 2024

Maryland Senate Finance Committee
Miller Senate Office Building

Re: Favorable Comments on HB 1388 Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

I, Christopher Caniglia, Doctor of Veterinary Medicine, Diplomat of the American College of Veterinary Surgeons Large Animal, am pleased to submit these comments on Maryland HB 1388 to prohibit non-competes in human and veterinary medicine.

As a veterinarian and board certified surgeon, I strongly support the proposed rule. In the profession, non-compete agreements are extremely common and restrictive with respect to the geographic radius and duration. Non-competes are detrimental to the veterinary profession for several 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, (3) they contribute to the rising mental health crisis in the profession, and (4) they violate public policy and are against the public interest. Furthermore, non-competes do not serve the purpose that hospitals and practice owners are trying to achieve and confidentiality agreements, non-solicitation clauses, and return of service agreements are better tools to serve these financial interests.

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 contribute to this exodus because when veterinarians leave a practice they are faced with the decision of changing careers to stay in their community or moving far away to still practice veterinary medicine. Either way the local community loses a provider. 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. I was the only boarded large animal surgeon in Maryland that received emergency surgeries and currently due to my non-compete, the state has lost this service and animal owners must now travel out of state to receive this care.

In Maryland, there are 3,295 licensed veterinarians with an estimated 2,900 actively practicing. While an exact number of domestic animals is hard to determine, combing data from the US Census 2023, the USDA-NASS 2022 State Agriculture Overview for Maryland, and the Maryland Horse Industry Board 2020 Report, there are over 1.9 million domestic animals in Maryland (and over 270 million animals if production chickens are included). This is a huge population for 2,900 veterinarians to provide care. Maryland has the most horses per square mile of any state in the country with around 100,000 horses in the state, but despite this there are only approximately 73 equine veterinarians in Maryland. This shortage leads to a doctor-patient ratio of over 1 to 1300. Forcing veterinarians who are willing to do this work out of geographical

areas due to non-competes strains this shortage further, places additional stress on the remaining veterinarians, and animal welfare suffers.

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 can have 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.

I and many other doctors and 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.

III. Non-competes contribute to the rising mental health crisis in our profession

The veterinary suicide rate is four times that of the general population and 70% of veterinarians have had a colleague or peer die by suicide. Eighty percent of all veterinarians suffer from clinical depression at some point. There is a Facebook support group for suicide prevention in the profession called Not One More Vet. You have to be a veterinarian to be a member of this profession and there are over 30,000 members. For some perspective there approximately 80,000 veterinarians in the United States. Almost half of the veterinarians in the country are a member of this group – this is a crisis. The job of providing health care to humans or animals is difficult in so many ways – no one needs a non-compete restricting them if they are unhappy in their work environment. This feeling of being trapped or pursued legally certainly contributes to these disturbing mental health statistics. Passing HB 1388 will not only improve the care of patients, it will save some veterinarian's life by allowing them to leave their place of employment rather than taking their own life.

IV. Non-competes in health care violate public policy and are against the public interest

Non-compete agreements involve 3 parties - the employer, the doctor and the general public, only the public never agreed to only use the doctor if they worked for a certain practice and have thus been forced into a contract they did not sign. The Supreme Court has held that the Contract

Clause of the Constitution does not prevent states from enacting laws to protect the welfare of their citizens (*Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398*). Maryland common law has long established that any non-compete agreement that is deemed against the public policy can be deemed void and unenforceable. By infringing on the rights of citizens to seek the health care of their choosing, limiting access to care in areas of critical shortage and jeopardizing the standard of care, non-competes in human and veterinary health care violate the public interest. Since the legislature represents the public interest, establishing non-competes as a violation to public policy through legislation is urgently needed.

The Declaration of Independence established the unalienable rights to life, liberty, and the pursuit of happiness in the country. Non-competes violate every citizen's right to life by directly negatively impacting their access to health care. They violate the right to liberty and pursuit of happiness of health care professionals by forcing them into situations where their oath to their profession to put patient care above all else is strained by toxic work environments that jeopardize patient care. An employer is disregarding the public interest by attempting to control the public's choice through a non-compete against a veterinarian or doctor. I humbly ask that the Maryland State Legislature pass HB 1388 to improve human and veterinary health care for all the citizens of Maryland.

Thank you for the opportunity to share my views.

Sincerely,

Christopher J. Caniglia, DVM, DACVS-LA

Facts About Non Competes in Health Care.pdf
Uploaded by: Christopher Caniglia
Position: FAV

THE FACTS ABOUT NON-COMPETES IN HEALTH CARE

C.J. CANIGLIA, DVM, DACVS-LA

STATES WITH COMPLETE OR NEAR COMPLETE BANS

A non-partisan issue

Alabama

California

Colorado

Louisiana

Minnesota

North Dakota

Oklahoma

Washington D.C.

STATES WITH BANS SPECIFIC TO HEALTH CARE

A non-partisan issue

- Conneticut
- Delaware
- Indiana
- Iowa
- Florida
- Kentucky
- Massachusetts
- Maine
- Montana
- New Mexico
- South Dakota

Allowed but limited time/radius

- Tennessee
- West Virginia

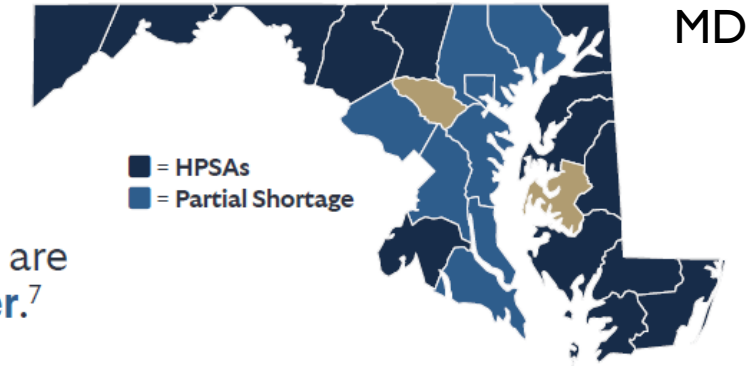
After non-competes were restricted, practices more likely to survive and grow larger relative to practices in states that continued enforcing health care non-competes[1]

1. Balasubramanian, N., Sakakibara, M., and Starr, E. Association between Physician Noncompete Agreements and Healthcare Access. https://ssrn.com/abstract=4630026

THE PHYSICIAN SHORTAGE IN MARYLAND

14 of Maryland's 24 counties are health professional shortage areas (HPSAs).[6]

- 8 of the 24 are partial HPSAs meaning **22/24 counties are affected.**
- **Low-income citizens** are disproportionately affected by these shortages.
- HPSA designations indicate areas where there are **3,500 or more patients for every one provider.**[7]



MD Compared to other States

35% worse for **family medicine/general practice**

Maryland is projected to be short 1,052 doctors by 2030.[3]

- **35.8% of physicians** in Maryland are current within retirement range.[4]
- The aging workforce is most prevalent in the **capital region and among surgical specialties.**[5]

1. Goldman, Devorah. "The Forgotten Physician." National Affairs, 2019. https://nationalaffairs.com/publications/detail/the-forgotten-physician.
2. Zhang, Xiaoming, Daniel W. Lin, Hugh Pforsich, and Vernon W. Lin. "Physician Workforce in the United States of America: Forecasting Nationwide Shortages." Human Resources for Health, February 6, 2020. https://doi.org/10.1186/s12960-020-0448-3.
3. The Robert Graham Center. "Maryland: Projecting Primary Care Physician Workforce." Policy Studies in Family Medicine and Primary Care. Accessed January 25, 2024. https://www.graham-center.org/content/dam/rgc/documents/maps-data-tools/state-collections/workforce-projections/Maryland.pdf.
4. AAMC. "Maryland Physician Workforce Profile." Association of American Medical Colleges, 2021. https://www.aamc.org/media/58211/download.
5. Barish, M.D., Chair Robert, and Secretary John Colmers. "Maryland Physician Workforce Study." MedChi, The Maryland State Medical Society, 2007. https://www.medchi.org/Portals/18/files/Law%20&%20Advocacy/Initiatives%20Page/Workforce%20Study%20Executive%20Summary.pdf?ver=2009-09-02-040000-000.
6. "Map of Health Professional Shortage Areas: Primary Care, by County, 2023 - Rural Health Information Hub," n.d. https://www.ruralhealthinfo.org/charts/5?state=MD.
7. KFF. "Primary Care Health Professional Shortage Areas (HPSAs) | KFF," November 1, 2023. https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Practitioners%20Needed%20to%20Remove%20HPSA%20Designation%22,%22sort%22:%22desc%22%7D.

THE NURSE SHORTAGE IN MARYLAND

2022 Maryland's Health Care Workforce Report
Maryland Hospital Association

JULY 2023

Maryland Nursing Programs $6 Million from the State to Help Address Nursing Shortage

Eliminating non-competes helps with shortage with zero financial cost to the State

THE VETERINARY SHORTAGE IN MARYLAND

Approx. 1.9 million dogs/cats

Approx. 269 million chickens

3,295 licensed veterinarians in MD with estimated only 2,900 practicing

Approx. 21,000 pigs

Approx. 100,000 horses

Approx. 243,000 cows

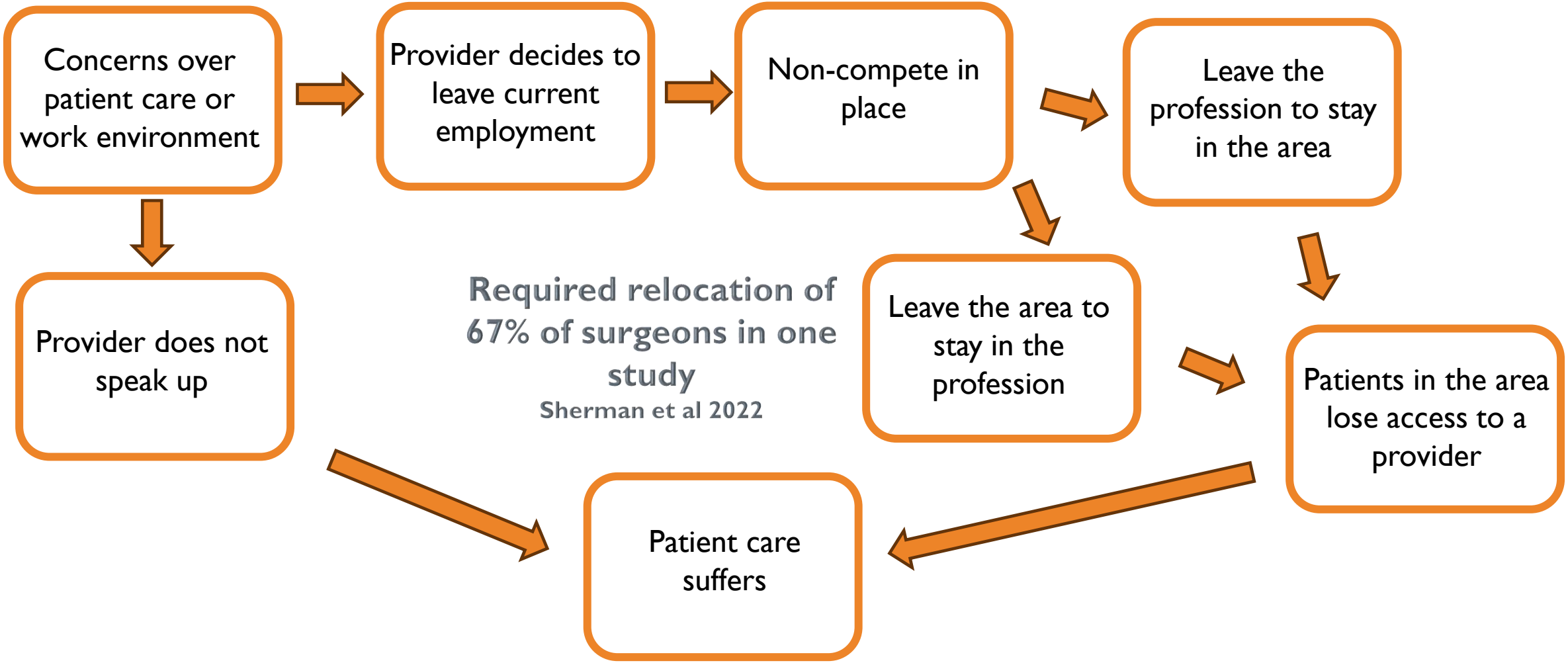
Only around 74 horse vets

Only 4 boarded large animal surgeons

Only 1 boarded large animal internist

AVMA Pet Ownership and Demographics Sourcebook
USDA/NASS 2022 State Agricultural Overview for MD
US Census 2023

HOW NON-COMPETES EXACERBATE SHORTAGES



Sherman WF, Patel AH, Ross BJ, Lee OC, Williams CS, Savoie FH. The Impact of a NonCompete Clause on Patient Care and Orthopaedic Surgeons in the State of Louisiana: Afraid of a Little Competition? Orthopedic Reviews. 2022;14(4).

MARYLAND HOSPITAL ASSOCIATION RECOMMENDATIONS

RECOMMENDATIONS FOR **POLICYMAKERS**

MHA recommends policymakers to pass legislation that promotes retention of health care workers

- A health care worker without a non-compete can change hospitals without fear of being forced out of state = healthcare worker retained
- Non-competes are an economic driver causing health care workers to leave the profession
- MHA opposition to HB 1388 does not match their recommendations

Retain the Health Care Workforce

1. Address social and economic drivers that cause health care workers to leave the profession, including the cost and availability of child and elder care
2. Establish a statewide workplace violence prevention consortium to provide training and support and recommend policy changes

2022 Maryland's Health Care Workforce Report
Maryland Hospital Association

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Anne Arundel Medical Center / Anne Arundel Physician Group example

- Hospital cut support staff, shut down oncology lab, and overall toxic work environment
  - Oncologists spoke up to improve patient care
    - Oncologists were terminated and non-competes enforced
      - Cancer patients were left with no continuity of care

Restricting access to doctors who leave due to concerns over patient care harms the public by subjecting them to substandard care

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Non-competes disrupt continuity of care

- Patients readmitted to the **same hospital** and managed by a **different surgeon** had **>2x risk of mortality** within a year than patients managed at the **same hospital** by the **same surgeon**[1]
- Patients with diabetes who see **different doctors** have a **higher mortality rate of 12%** compared to those who see the **same doctor** at **4%**[2]
- **82%** of studies assessed demonstrate that continuity of care by the **same provider reduces mortality rate**[3]
- Pet owners more likely to **trust treatment recommendations**, receive personalized care, and **better patient outcomes** when they have an established relationship with their veterinarian[4]

Continuity of care with the same provider, not the business, saves lives

1. Justiniano CF, Xu Z, Becerra AZ, Aquina CT, Boodry CI, Swanger A, Temple LK, Fleming FJ. Long-term Deleterious Impact of Surgeon Care Fragmentation After Colorectal Surgery on Survival: Continuity of Care Continues to Count. *Dis Colon Rectum*. 2017 Nov;60(11):1147-1154
2. Pan CC, Kung PT, Chiu LT, *et al*. Patients with diabetes in pay-for performance programs have better physician continuity of care and survival. *Am J Manag Care* 2017;23:e57–e66.
3. Pereira Gray, D., Sidaway-Lee, K., White, E., Thorne, A., and Evans, P. Continuity of care with doctors – a matter of life and death? A systematic review of continuity of care and mortality. *BMJ*. 2018 (8).
4. US Pet Market Outlook Report 2021-2022 Report

HOW NON-COMPETES VIOLATE THE PUBLIC INTEREST

Columbus Medical Services LLC v. Thomas 2010

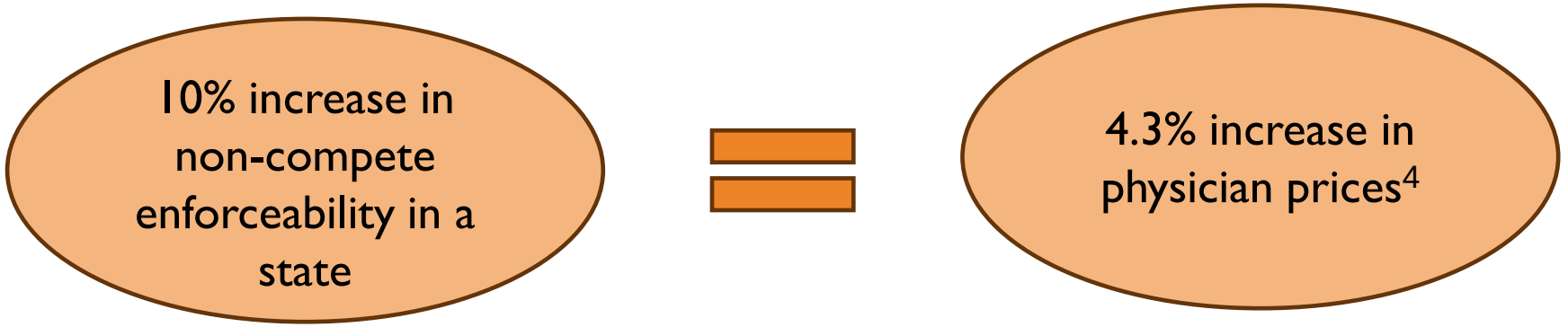
- Tennessee Supreme Court upheld the Court of Appeals ruling non-competes against the therapists **violated the public interest by disrupting the continuity of care.**
  - "The services provided by medical professionals such as physicians go well beyond merely providing goods or services."

Ellis v. McDaniels 1979

- Nevada Supreme Court established that loss of specialty medical care **endangered the public far in excess** of any perceived danger to the business interest
  - **Protecting the public interest** to retain access to these medical services is greater than the interest to protect the integrity of the contract

HOW NON-COMPETES INCREASE COST OF CARE

- Patients visiting the **same family physician** had **39% lower** total medical costs[1]
- Cost of veterinary care has increased faster than inflation for the last 20 years despite veterinary compensation decreasing[2,3]



Eliminating non-competes would reduce aggregate medical spending by $25 billion per year nationally[4]

1. De Maeseneer JM, De Prins L, Gosset C, Heyerick J. Provider continuity in family medicine: does it make a difference for total health care costs? *Ann Fam Med.* 2003;1(3):144-148.
2. Quedraogo F, Dicks M. Are rising veterinary salaries driving up the cost of care? *DVM360* . 2018
3. Einav I. Is American pet health care (also) uniquely inefficient? *American Economic Review: Papers & Proceedings*. 2017;107:491-495. [Google Scholar]
4. Hausman, Naomi, and Kurt Lavetti. 2021. "Physician Practice Organization and Negotiated Prices: Evidence from State Law Changes." *American Economic Journal: Applied Economics*, 13 (2): 258-96.

HOW NON-COMPETES INCREASE COSTS FOR HOSPITALS

Holy Cross Hospital v. American Anesthesiology Services of Florida;
St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse

- Both active lawsuits where hospitals state non-competes drive high prices and compel the hospital to accept the business' terms or face patient care disruptions and delays
- Costs hospitals millions to buy out non-competes to avoid interruptions in patient care

Greater Baltimore Medical Center / North American Partners in Anesthesia

- Cost hospital millions to buy out non-competes to avoid interruptions in patient care

United States and North Carolina v. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System

- 2018 settlement reached to prevent Carolina Healthcare System from using non-competes they had in place that drove up costs for patients

MHA opposition to HB 1388 could have significant costs to MD hospitals to continue to buy out non-competes

HOW NON-COMPETES PERMIT FRAUD

- Pediatrix billed the government and thus taxpayers for critical care services when the infants were not critically ill
- Pediatrix controls the doctors it employs with non-competes and mandatory arbitration to resolve disputes[1]
- With non-competes doctors faced retaliation if they spoke up
- **One brave doctor (Daniel Hall, M.D.) finally stood up to expose the fraud**
- The Office of the US Attorney for the District of Maryland led the case and Pediatrix ordered to pay settlement to the US government of **$25 million**

1. Kinney, E. 2008. The corporate transformation of medical specialty care: the exemplary case of neonatology. *J Law Med Ethics*. 36 (4) 790-802.

HOW NON-COMPETES DETER TALENT

Prohibiting non-competes for human and veterinary health professionals will attract talented professionals to Maryland

- **71% of surgeons** in one study stated a non-compete would deter them from accepting a job offer[1]
- National veterinary corporations are actively using "no non-compete" as a recruiting tool (Rarebreed Veterinary Partners, Suveto, Destination Pet, Noah's Animal Hospitals)
- Non-competes stifle innovation by **reducing new patents** by 16-19%, decreased break through inventions, **decreased productivity** by 30% [2,3]

1. Sherman WF, Patel AH, Ross BJ, Lee OC, Williams CS, Savoie FH. The Impact of a NonCompete Clause on Patient Care and Orthopaedic Surgeons in the State of Louisiana: Afraid of a Little Competition? Orthopedic Reviews. 2022;14(4).
2. Johnson, Matthew, Michael Lipsitz, and Alison Pei (2023), "The Enforceability of Noncompete Agreements and Innovation: Evidence from State Law Changes." NBER Working Paper 31487.
3. Mueller, Clemens (2022) "How Reduced Labor Mobility Can Lead to Inefficient Reallocation of Human Capital." https://conference.iza.org/conference_files/LaborMarkets_2022/mueller_c32517.pdf.

HOW NON-COMPETES CAUSE THIRD PARTY HARM

Banning non competes based on third-party harm has a long-standing tradition in the United States among lawyers

Non competes are prohibited in the practice of law based on Rule 5.6 of the American Bar Association because:

> *"An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer."*

Harm to consumers comes from:

1. Higher prices
2. Lower quality
2. Reduced output

Despite not having non-competes the legal profession is **thriving**

55% increase in wages of lawyers over past 20 years

5% increase in number of lawyers over past 10 years

$248 billion industry in 2012 to **$331 billion** in 2024

https://www.statista.com/forecasts/409737/offices-of-lawyers-revenue-in-the-us

American Bar Association Profile of the Legal Profession Report 2023

MORE HARM CAUSED BY NON-COMPETES

Small businesses are negatively impacted by non-competes

- 35% of small business owners prevented from hiring an employee due to a non-compete[1]
- 59% of small business owners approve of the FTC proposed rule to ban non-competes[1]

➡ ***Negative economic impact of a non-compete ripples to other small businesses in the industry***

Veterinary suicide rate averages **4x** the general population[2,3]

- Work-related stress is a major cause of depression for veterinarians[2]

➡ ***Non-competes prevent veterinarians from changing their working environment***

1. https://smallbusinessmajority.org/sites/default/files/research-reports/2023-non-compete-poll-report.pdf
2. Tomasi SE, Fechter-Leggett ED, Edwards NT, Reddish AD, Crosby AE, Nett RJ. Suicide among veterinarians in the United States from 1979 through 2015. J Am Vet Med Assoc. 2019 Jan 1;254(1):104-112.
3. Suicide Rates by Industry and Occupation — National Vital Statistics System, United States, CDC Report 2021

WHAT HB 1388 / SB 1182 ACCOMPLISHES

This bill **allows**:

1. Confidentiality Agreements
2. Non-solicitation Clauses
3. Return of Service Agreements

So hospitals and practice owners can protect their investment

This bill **prohibits**:

1. Non-compete Agreements

So patients can protect their right to choose their health care

So providers can stay in the local community

So cost of health care will decrease and quality of care will increase

WHY LEGISLATION IS NEEDED

Left solely to the courts to decide case precedent, many health care workers will never challenge their non-competes and this case precedent is slow to bring about change

"For every covenant that finds its way to court, there are thousands which exercise an **in terrorem** effect on employees who respect their contractual obligations and on competitors who fear legal complications if they employ a covenantor, or who are anxious to maintain gentlemanly relations with their competitors. Thus, the mobility of untold numbers of employees is restricted by the intimidation of restrictions whose severity no court would sanction." Blake 1960 *Harvard Law Review*

Do we want doctors and vets to feel terrorized in professions that already strain providers mental health?

Does this in terrorem effect really lead to the best quality patient care?

PLEASE SUPPORT HB 1388 / SB 1182

PATIENTS AND PROVIDERS OVER PROFITS

THANK YOU

BlumelWrittenTestimonySB1182.pdf
Uploaded by: Dayna Blumel
Position: FAV

SB 1182 / HB 1388 AN ACT CONCERNING LABOR AND EMPLOYMENT – NONCOMPETE AND CONFLICT OF INTEREST CLAUSES – VETERINARY AND HEALTH CARE PROFESSIONALS
March 27, 2024 - IN SUPPORT (FAV)

Members of the Senate Finance Committee & Chair Senator Beidle:

Thank you for the opportunity to submit written testimony. My name is Dayna Lewnes Blumel, I was born and raised in Annapolis and I own and run a horse farm in Davidsonville. I am strongly urging you to support SB 1182 / HB 1388, An Act Concerning Labor and Employment - Noncompete and Conflict of Interest Causes - Veterinary and Health Care Professionals.

I am in favor of SB 1182 / HR 1388 for many reasons, but most importantly because I have personally been directly affected by the constraints of non-compete agreements in the last couple of years.

Two years ago, one week before Christmas, I was diagnosed with breast cancer. As you may imagine, I was scared, devastated, and unable to see a path forward. I was referred to my oncologist by my general practitioner, the head radiologist at the imaging center, and she has treated family and a friend of mine. She is a very well-known oncologist and is known as “the best oncologist in our greater area” and little did I know that she was in the middle of a non-compete lawsuit with the hospital.

Because I was in uncharted territory with my own health; having always been extremely healthy, I knew I needed someone I could trust to navigate this cancer diagnosis. What I didn’t expect, was to have to drive an hour out of my way to have my doctors appointment, which was also an hour from the treatment center. When I started chemo, my doctor couldn’t be there. There were many patients that had allergic reactions to the medicine and there were no doctors there because they had to be outside of their noncompete area. The oncology group had left the hospital because the care was not up to their standards and their patients suffered. I figured out how to make it work and I stuck with my doctor and I’m so glad I did, but it was not the most convenient or easy thing to drive an hour out of my way after having chemotherapy and also not having a doctor at the treatment center. Many questions come up during treatments and the nurses had to get the doctors on the phone to get answers.

I am now affected by a similar non-compete clause with my veterinarian. I have been using my veterinarians for over six years and they know my horses inside and out. Because I own the farm in Davidsonville, I also have other horses on my farm and my biggest fear is that we will have an emergency in the middle of the night and I can’t get a vet to my farm. What you may not know is that you have to establish a deep relationship with your large animal vet because they have to travel to you unlike other medical professions. Large animal vets are overworked and there are very few of them. If you do not have a long-standing relationship with the vet, they are not going to come out to your farm for emergencies and this is what I lose sleep over at night. It is my

choice who I use for veterinary care, and I understand that I can haul my horses for routine visits. At this time, I am unable to call them for an emergency. I have no options at this time for emergencies.

Please understand that in the medical and veterinary professions the patients have every right to choose their practitioner, and for many reasons that are probably not obvious to those who do not have large animals or who do not have a cancer diagnosis. This may not seem like a big deal, but it most definitely is.

I truly hope that you are also in favor of this bill and that you vote on behalf of ALL patients and not the profits. Thank you for your time.

Dayna Lewnes Blumel

Dayna Lewnes Blumel * 3760 Birdsville Rd. * Davidsonville MD 21035 * 703.597.2252

Crossover Testimony - HB 1388 - Labor and Employme

Uploaded by: Donna Edwards

Position: FAV

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Balto. (410) 269-1940 • Fax (410) 280-2956

President
Donna S. Edwards

Secretary-Treasurer
Gerald W. Jackson

HB 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals
Senate Finance Committee
March 28, 2024

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Madame Chair and members of the Committee, thank you for the opportunity to submit testimony in support of HB 1388. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of Maryland's 300,000 union members, I offer the following comments.

Noncompete clauses and conflict of interest provisions restrict the ability of employees to find new employment. These agreements used to be reserved for executive level professionals involving work with intellectual property. Increasingly, noncompete and conflict of interest clauses are being used to restrict all types of employees. These bans can last for a year or two after employment, resulting in newly unemployed employees not being able to get a job in their field without moving or traveling long distances to work. Overuse of noncompete clauses has become such a problem that the Federal Trade Commission is considering a rule to ban them entirely, arguing that they rob employees of $300 billion in earnings each year.[1]

HB 1388 bans these noncompete provisions from being used in licensed veterinary or health occupations. There is already a shortage of 15,000 veterinarians, why should the state allow noncompete agreements that exacerbate this shortage? A Government Accountability Office study found that, "18 percent of workers were subject to noncompete agreements (NCAs), and one of the studies estimated that 38 percent of workers had been subject to an NCA at some time in their careers." They also found that, "NCAs restrict job mobility, and may reduce wages and new firm creation. Two of these studies found that even when NCAs are not legally enforceable in a state, NCAs reduce job mobility and workers with NCAs are less likely to search for new jobs. Studies also found that NCAs lower workers' earnings, on average, though certain groups like executives may experience mixed effects. In addition, studies found that NCAs may discourage workers from starting new firms."[2] These agreements negatively impact the rights and freedoms of workers and stifle free market competition.

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[1] Federal Trade Commission, "FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition." January 5, 2023.

[2] "Noncompete Agreements: Use is Widespread to Protect Business' Stated Interests, Restricts Job Mobility, and May Affect Wages." GAO-23-103785. Published: May 11, 2023. Publicly Released: May 16, 2023.

In a 1972 ruling in Becker v. Bailey, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts. The Court found noncompetition agreements in employment contracts to be enforceable provided they met several factors. Included among those factors is the requirement to not impose an undue hardship on the employee or disregard the interests of the public. We believe that many of these agreements do both. The current use of these agreements are a method to restrict a worker's ability to work, harming the dynamic nature of our economy, which operates on the principle that employers compete against each other to attract employees.

HB 1388 helps level the playing field for both workers and employers. We ask for a favorable report.

Dr. Jennifer Krueger Testimony.3.28.24.pdf
Uploaded by: Dr. Jennifer Krueger
Position: FAV

Dear Maryland General Assembly Members,

I am writing to ask for your support for Bill SB1182 / HB1388. It is imperative we eliminate non-competes in the state of Maryland. They are antiquated, have far reaching negative consequences in both veterinary and human healthcare, and adversely affect the public interest.

In my very personal circumstances, I had been with my recent veterinary hospital for nearly ten years until two weeks ago. At the onset, I signed a contract when hired at a much more naive point in my life and professional career. In hindsight, I should have had a lawyer review the contract before signing to better guide me, alerting me to the risks of locking myself into the chains that then bound me. Over the years, the main issue affecting my life directly was the ten mile noncompete I agreed to when signing that document. I was a young mom with a 2 year old daughter when I first came to work there. I had been practicing veterinary medicine for 6 years at that point. I initially practiced in Gaithersburg, Maryland later making the switch to Sandy Spring, Maryland- immediately adjacent to Olney. Olney is the town I had grown up in since the age of 4 and the town I had returned to after having my first child to be near my family, allowing for help with childcare and offsetting that rising expense.

I had my second child about a year after moving to this local practice. My daughter entered preschool right around the corner from the practice as it was very convenient geographically and logistically. By this time, countless red flags had revealed themselves at this practice, indicating it wasn't the right fit for me long term. A continuous negative culture enveloped this practice, manifested by the owners, that trickled down to affect myself, other veterinarians and many of the support staff. Issues lending to the negative culture included discriminatory attitudes toward myself and others that were working parents and needed schedules adjusted at times to accommodate for both regular care and emergencies that inevitably arise with having children, frequent turnover of staff (due to the negative culture) lending to regular shortages that placed additional strain and stress on all of the remaining staff, not keeping up with market value compensation of the veterinarians (myself included) and staff, dismal conflict resolution, unprofessional/disrespectful conversations with the superiors, and lack of appropriate human resources within the hospital, just to name a few. I witnessed the entire staff turn over nearly five times in that ten years and watched numerous wonderfully skilled, emotionally intelligent veterinarians depart.

I had one foot out the door for years as a result of these issues and had not been able to pull the plug because of the non-compete clause in my contract. I grew up in this town, have an extensive friend and family network here- the majority of which are clients of mine. I have deep connections and close relationships to these clients and their pets that trust me to care for them. Having to consider alternative employment options ten miles or more away would mean placing undue strain on these trusted clients to have to travel to see me when they still want me to provide care for their beloved animal companions and family members. In this area, that translates to at least 20-30 minutes of travel time and often more. In an era where time is of high value and very limited quantity for most people, that time and distance would be unnecessarily inconvenient for them.

Through all of my discord at this practice, myself, like many others faced with feeling trapped in sub par and detrimental conditions, I was one of the statistics that reached the lowest of lows at the worst of it. I never considered suicide despite at least moderate depression, but 7 years ago when my son was only several months old, I hit rock bottom in my mental health. One night out of the blue, I had a debilitating panic attack that sent me to the emergency room. I suffered repeat attacks for weeks and then months. I was still breastfeeding my son so I wasn't inclined to take medication at that point. I

relied on multiple mental health professionals to help me tamper the panic attacks and severe anxiety that had emerged down to a level where I could still function both professionally and personally. It's taken years and the eventual addition of medication, along with continued therapy to regain control of my mental health, as well as my physical health that suffered as a consequence of the psychological issues. While I may be predisposed to anxiety, as many of us are; it became clear that years of working in this practice with the inability to take another job in or very near my hometown to be close to my children, their and my support network of family and friends, and the clients that rely on me- contributed largely to my mental health crisis.

Over the last several years, I've explored many alternative job opportunities and ultimately continued to grin and bear the dire conditions at the local practice because it allowed me to be close to my children, family, and bonded clients. However the cost to my mental and physical health enduring these conditions was quite high. I very recently made the painfully tough decision to leave this practice without any definitive further employment lined up.
Due to the non-compete clause in my contract, my options to continue practicing small animal medicine are restricted to a distance and travel time that is just not feasible to allow balancing my family life, professional life and maintaining my physical and mental health. This ultimately has meant that I am giving heavy consideration to leaving this corner of the veterinary profession, which is already suffering a significant shortage in veterinarians, to possibly pursue a job in the government sector as it would not violate my non-compete.

Just four years ago at the onset of the pandemic, I watched my recent former employer threaten and start to pursue legal action against a close friend and veterinary colleague of mine that used to work at this same practice. She had accepted a position with another practice that was right around 9 miles away, would be giving her the market value compensation she deserved and was located minutes from her home, family, and daughter. Ultimately unable to afford the legal fees to fight the ten mile non compete she also had in her contact, my colleague had to work at an alternate practice even further from her home for a period of one year until she could move to the original practice after her noncompete term expired. The extreme difficulty and emotional toll this placed on my colleague were unjust and unnecessary.

As I have talked with countless veterinarian after veterinarian about this topic, they all too often have a similar story to share or arduous conditions they've had to endure because of a noncompete clause. In addition to the very personal effect this issue has had on me, non- competes attempt to prevent owners from following a veterinarian if they leave a toxic practice. A practice should not be allowed to possess ownership of a client. Clients have an inherent right to decide who should provide medical care to their pets, as they should with who they choose take care of themselves medically in the human healthcare sector. Multiple other states have already abolished noncompetes for veterinarians or do not uphold enforceability of these clauses.

Maryland needs to follow suit to remove an outdated, deleterious precedent and do what is in the best interest of the veterinarian, the veterinary profession as a whole and the public interest.
We graciously ask for your support in this matter.

Sincerely,
Dr. Jenny Kinnetz-Krueger

House Bill 1388-FAV- Erica Carr Written Testimony.

Uploaded by: Erica Carr

Position: FAV

H B 1388
FAV

Erica Y. Carr
4235 Hidden Creek Road
Port Republic, MD 20676
443-624-3373

Distinguished Senators,
I am humbly and gratefully asking you to support HB-1388 to prohibit non-compete agreements in both health care and veterinary practice.

My husband Jerrell Carr is a retired Maryland State Trooper and I am a 20 year civil servant with the federal government. I have called Maryland home my entire life and we have raised our two daughters Adrianna (15) and Ziva (11) in Calvert County. Our daughters began their equestrian enthusiasm at the tender age of four and three years old respectfully. Jerrell and I have never ridden a horse a day in our lives, and in fact I have a fear of these gentle giants. But despite Adrianna being highly allergic and Ziva being fiercely competitive keeping up with her sister we entered the equestrian world and have been "all in" for ten years. Jerrell and I do not come from wealthy backgrounds but we feel our girls have once in a lifetime talent, so as parents we have made a way for them to pursue their dreams. They both aspire to ride for an NCAA Division 1 team in college.

In 2021, we purchased our first horse, a grey Dutch Warmblood named Gotham. We quickly learned that a performance horse requires performance level care. To keep an equine athlete like Gotham in peak shape they must stay healthy, maintain excellent nutrition, and have regular access to peak medical care by vets trained in performance horses. After extensive research we met Dr. CJ Canigilia and Dr. Brittany Williamson who were affiliated with Wolf Creek Equine Hospital. What a bonus that Dr. CJ and Dr. B are also married and located within minutes of the farm where we board our horses. Dr. CJ and Dr. B have vested their careers into the care of performance ponies and horses, as well as cutting edge surgical experience in some of the toughest and most challenging equine health conditions. In April 2023, Dr. CJ was able to swiftly and effectively care for Gotham when he coliced at a local competition. For the non-horse person like me, colic is when a horses intestinal tract can twist for a number of reasons. Without prompt and precise medical care, Colic can be fatal within hours. Dr. CJ was able to pinpoint possible culprits and return Gotham to peak performance.

In May 2023, we were faced with another equine emergency when our beloved pony Penny was found in distress in her field. We quickly rushed Penny to Dr. CJ at Wolf Creek and within minutes of arriving, he performed a complicated but successful surgery removing a large tumor and resectioning Penny's intestinal tract. Dr. CJ was the only equine surgeon with the skills to perform this delicate and risky

surgery, given Penny's golden age of 19 years old. For three months Dr. CJ treated Penny with specialized care until she was able to return to the ring. Dr. CJ was also right by Penny's side when an unrelated tragic incident resulted in her passing. Dr. CJ's compassion during Penny's treatment, recovery, and passing was felt and seen, and from that moment Dr. CJ would forever be part of our family.

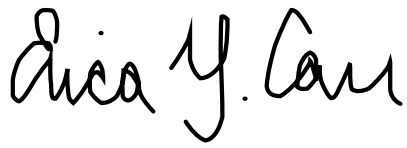
In August 2023, following Penny's death, we acquired a second horse named Prima. She is an eight year old Dutch Warmblood with a successful start in her young competitive years. Prima is also a performance horse with the potential to compete in shows that Division I colleges recruit from. Without hesitation we had Dr. CJ and Dr. B begin Prima's performance horse care. With Prima's transition to a new home, she developed an stress-related illness that required their specialized care. Dr. B placed Prima on a regiment of medicines to both treat and prevent recurrence, which could have been fatal if not properly treated. In November 2023, we learned that Dr. CJ and Dr. B were leaving Wolf Creek Equine Hospital to begin their own performance horse practice. Without hesitation we asked to maintain our vet relationship with Dr. CJ and Dr. B, given they have been the only vets to care for our animals. Unfortunately, we also learned that a non-compete agreement signed between Dr. CJ and Dr. B and their prior employer, Wolf Creek Equine, prevented us from continuing under their care. This news came as a shock and surprise. We had never used the only remaining vet at Wolf Creek, and that vet to date does not offer the services needed for our horses. No less than two weeks later our horse Prima casted herself in her stall. Again, for the non-horse person like me, this is when a horse lays down in their stall and gets stuck in a corner. The horse begins to panic and kicks, twists, and turns in an effort to roll themselves over and stand up. Despite their impressive size, horses are incredibly fragile. In Prima's attempt to unwedge herself in the middle of the night when this occurred, she sustained extensive injuries to her face, ears, legs, and stomach. Prima looked like she went 12 rounds in a boxing match. Due to a simple signature on a piece of paper, the two vets we've entrusted with Prima's care were unable to provide emergency medical service despite them being less than five miles from Prima. Our trainer was able to locate a vet that provided treatment as best as possible, but they lacked the specialized tools that a performance horse vet keeps in their mobile vet trucks so the extent of her injuries was unknown. Again, we were unable to seek the speciality care that Prima required due to a piece of paper. Wolf Creek Equine no longer has the specialists, availability, or expertise to treat our animals and due to a two year non-compete, the only ones suffering are the animals. Vets are a diminishing profession, and finding an equine vet when minutes matter and hours count is becoming impossible. And to add insult to injury, there are vets available, willing, able, and ready to fulfill their "duty to care" but are restricted based on a piece of paper. While we were absolutely grateful for the care provided to Prima by the vet we found in the moment, her recovery has been hindered. Key tests could not be performed and her

wounds became infected and her treatment prolonged. Instead of Prima's vets driving five miles to treat her, we had to load her on a trailer and take her 100 miles away where Dr. CJ could care for her and not violate his non-compete agreement. Prima is expected to recover as best as possible but her story is not unique and the reality of a similar accident or medical condition happening is frankly terrifying. Our barn consists of over 40 performance horses all with unique needs to perform at their very best. These horses and ponies have all been patients of Dr. CJ and Dr. B for years and have never been treated by any other local vet, because the services these animals need are not offered.

Ironically, during the course of HB 1388 coming to fruition, I learned my family was adversely impacted by a medical non-compete agreement. My niece, Amanda Shay Wilkins, was diagnosed with metastatic breast cancer at the age of 33 years old. Amanda was a OB/GYN nurse and a U.S. Air Force spouse and Maryland native. During the course of Amanda's final weeks of life, a medical non-compete kept her oncologist from being by her side and providing end of life care. The doctor that held her hand during her diagnosis, was not allowed to hold her hand as she took her last breath...all because of a no-compete agreement precluding her doctor from tending to her at Anne Arundel Medical Center in Annapolis.

I am humbly and gratefully asking that you vote in favor of HB-1388 releasing doctors and vets from non-compete agreements so they can fulfill their duty of care. Patients deserve to be cared for by the doctors and vets that they chose.

Regards,



Erica Carr

HB1388 (Senate)_FAV_MDAFP_Dr. Rao - Final.pdf
Uploaded by: Gattu Rao
Position: FAV

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Terri L. Hill

FROM: Gattu Panisri Rao, MD, MPH, FAAFP

DATE: March 28, 2024

RE: **SUPPORT** – House Bill 1388 – *Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals*

I am writing to express my support for House Bill 1388.

I am a primary care physician that previously provided care to patients in Maryland. The question is why I am not practicing in Maryland at this time and where am I? I took a position with a health care system in Maryland immediately out of residency, with loans. Finding a job is critical especially after coming out of a family medicine residency. I had the choice of staying in New York or moving to Maryland, I chose the latter. Despite contract review and seeing the noncompete, it is a strong ideology that a primary care physician finds a community and provides for that community. After five years with that health care system, I made the decision to part with them. Upon this decision, I re-reviewed my contract and found that I had to follow the noncompete clause that required a "10 mile radius" from ANY of their clinics, not just my clinic. Based on the location of my clinic, it essentially forced me into the DC suburbs or out of state. At the time I had to think about my family and take into consideration that I did not have the money to buy myself out of the noncompete. Therefore, the best option was to move to practice medicine in another state, while residing in Maryland.

Now, I am working in another state as I still reside in Maryland. What that means is that I have contributed to the primary care workforce shortage in Maryland. Had the noncompete clause never existed, I could still be providing primary care needs for patients in Maryland. I am not alone in this, and in fact I have a few colleagues that work within my current health system, due to their noncompete clauses, from other health care systems in Maryland. In fact, they all still live in Maryland at this present time.

As a primary care physician, I take pride in immersing myself and caring for my community. Due to this principle, I have chosen to continue my work in the state I was displaced to, all while residing in Maryland. Voting in favor of House Bill 1388 would remove any barriers to practicing physicians who wish to remain in Maryland, something I wished for. More importantly we can continue to maintain a strong primary care workforce, thus leading to access to primary care needs in the state.

For the reasons set forth above, I respectfully ask the Committee to vote favorably on House Bill 1388 and increase access to physician care for Maryland patients.

support for HOD bill March 27 2024.pdf
Uploaded by: james gammie
Position: FAV

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.

Final Revision Non Compete.pdf
Uploaded by: Jennifer Dawson
Position: FAV

Good Afternoon,

My name is Jennifer Dawson. I am both a Clinical Social Worker and an animal owner, and I am here to ask for your consideration in the passing of the HB1388 bill.

As a practitioner, I've seen firsthand how stressed and overworked healthcare professionals are and work environments can play a major part of that. There are many reasons why people leave their jobs. Location, opportunities for growth, family, lifestyle, changes, and toxic work environments. Having a noncompete in the healthcare industry only adds to that heavy burden as they place a variety of restrictions both on the provider and the patient. These can include a parameter of distance where they can practice in the future, along with time requirements . This now causes an employee to be forced to take more time away from their families if they have to travel further and forcing them to sever relationships with the clientele they've built up and treated for years.

There is a place for non-competes certainly, but when you're working in healthcare with both humans and animals, it is very individualized, and our craft is our brains with creative planning and our hands, and how we work to treat our clients.

If a business or organization is running a moral and ethical standard of care, there's no reason to feel threatened by employees by leaving and maybe starting their own practice. I have experienced this and personally it is nice to be able to

collaborate with other clinicians that have different specialties. Noncompetes force people to stay, which becomes more about the business practice, and not about the quality of care that you are providing to people or animals.

As a horse owner, I've had my own ordeal due to a non-compete. My 24-year old horse was in the midst of bi-monthly chemotherapy treatments for a sinus tumor and learned that his longtime vet had to leave his practice, and was no longer able to see patients within 30 miles of his former clinic. For me, the clock was suddenly ticking as I tried and failed to find vets in our area who could provide this specific treatment. When I finally did, it took a month to get in, and an hour away, I had to start my horse's treatments all over again because of the delay caused by a non-compete. These are not animals you can put in the back of your car. I don't have my own trailer so this was expensive,time-consuming, and enormously stressful. Currently, the state of Maryland has four board-certified equine surgeons. Any emergencies now have to travel out of state to either New Bolton , Pennsylvania, or Leesburg, Virginia. Maryland is home to over 100,000 horses and this noncompete is putting our animals' lives at risk as we now travel out of state for medical surgical emergencies. This would be devastating to any animal owner.

Non-competes also have a devastating potential impact on my *own* career and clientele. As a Clinical Social Worker, signing a

noncompete means that if I have to leave my practice and adhere to a distance perimeter, patients that wish to continue with me, now have to travel further. We can all agree life is busy and simple conveniences, such as distance for our providers of care, are factors we take into consideration. With the shortage of medical practitioners, non competes also restricts them from an interest in the industry.

As mentioned earlier, the choice to leave our workplace comes from a variety of reasons. Clients that come to therapy have a variety of needs. So how do I tell a trauma patient, or a suicidal patient that has been under my care for that they're not going to have access to me, unless they choose to travel 30 miles away? Being forced to start up with a new provider is both disruptive and overwhelming. We hear in the news all the time, the mental health crisis, and the lack of access to mental health. If non-competes were terminated in the healthcare sector, perhaps access would be more easily available. I believe Non-competes only cause harm in healthcare, and undue hardships for practitioners, and should not exist in any aspect of the medical community. So I ask you to please take this into consideration in passing this bill for medical providers both in the healthcare sector and veterinarian care sector.

Thank you.

Jennifer Dawson MSW, LGSW

2024 Support Testimony HB 1388 in SENATE 3.1.24.p
Uploaded by: Jennifer Ray Beckman
Position: FAV

MARYLAND
CHAPTER
AMERICAN COLLEGE
of CARDIOLOGY®

March 27, 2024

The Honorable Pamela Beidle
Chair, Finance Operations Committee
Maryland Senate
3E Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401
pamela.beidle@senate.state.md.us

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

Dear Senator Beidle:

The Maryland Chapter of the American College of Cardiology (MD-ACC) appreciates the opportunity to state our SUPPORT for ***HB 1388 Labor and Employment – Noncompete and Conflict of Interest Clauses*** which would prohibit employers from forcing departing physicians and other providers from practicing within a certain geographical area for a specific time upon leaving their current employer.

Unfair noncompete clauses are more prevalent than ever affecting "between 37% and 45% of physicians" and are "especially problematic for residents, fellows and young physicians by limiting their opportunities for career advancement and restricting their ability to provide care in economically or socially marginalized communities," according to the American Medical Association.

Most non-compete contracts go so as far as to prohibit providers from notifying their patients of their departure, rendering them unable to provide support through what for many is a difficult transition.

The increased use of non-competes is especially troubling when considering the rapid, sustained increase of hospital-based physician employment over the last several years, which according to the Medical Group Management Association (MGMA) rose from 16 percent in 2006 to nearly 86 percent in 2022.

Unfortunately, as hospital and health system-based employment has increased, so too have the geographic boundaries of non-compete contracts. HB 1388 does not seek to halt this expansion, but simply address an unforeseen consequence that will benefit patients.

Beyond geographic restrictions, there is evidence that non-compete clauses and other restrictive covenants have adversely impacted clinicians' work and personal lives – an extremely important topic, given the high rates of burnout, depression, and suicide.

As you know, the Federal Trade Commission's (FTC) final rule on this issue is expected to be released in April of this year. While we applaud them for doing so, we believe that states will need to take action, as HB 1388, to put its principles into effect. The FTC simply does not have the resources to enforce a nationwide ban on non-compete agreements. States, on the other hand, are already doing it through the legislatures and the courts.

For all these reasons, for the benefit of Maryland patients and our healthcare workforce, we ask for a FAVORABLE report on HB 1388.

Thank you for your time and consideration.

Sincerely,

Sammy Zakaria, MD, FACC
President-elect, Maryland ACC

References:

1. Marshall JJ, et al. Restrictive covenants and non-compete clauses for physicians. JACC Advances 2023; 2(7). https://www.jacc.org/doi/10.1016/j.jacadv.2023.100547

2. ACC Submits Comments to FTC on Non-Compete Proposed Rule. April 6, 2023. https://www.acc.org/latest-in-cardiology/articles/2023/04/06/14/02/acc-submits-comments-to-ftc-on-non-compete-proposed-rule

3. FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition. January 5, 2023. FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition | Federal Trade Commission

4. AMA backs effort to ban many physician noncompete provisions. June 13, 2023. https://www.ama-assn.org/medical-residents/transition-resident-attending/ama-backs-effort-ban-many-physician-noncompete

5. MedChi House of Delegates – Final Reports and Resolutions. October 28, 2023. Resolution 22-23 – Restrictive Covenants in Physician Contracts, page 6. Final Reports and Resolutions Fall 2023.pdf (medchi.org)

Marine - Testimony SB1182 - 3.28.24.pdf
Uploaded by: Joseph Marine
Position: FAV

March 28, 2024

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE: SUPPORT FOR SB1182/HB1388 LABOR AND EMPLOYMENT – NONCOMPETE AND CONFLICT OF INTEREST CLAUSES – VETERINARY AND HEALTH CARE PROFESSIONALS BILL

Dear Senator Beidle and Honored Committee Members:

I am a cardiologist practicing in Maryland for the past 19 years, as well as the immediate past-president of the Maryland Chapter of the American College of Cardiology (ACC). During my tenure, I have heard from a number of cardiologists in the state who have been adversely affected by non-compete clauses in health system contracts. These are often onerous and non-negotiable terms which limit the ability of doctors to change employment without having to leave the state, contributing to our health care workforce shortage. Non-competes also sever valuable patient-physician relationships often built up over many years. As Chair of the ACC Board of Governors in 2021, I co-led a workgroup which found that the great majority of cardiologists in the US find these clauses to be non-negotiable, harmful to the patient-physician relationship, and contrary to physician well-being and the public interest.[1,2]

I know one cardiologist who was recruited into a Maryland practice to perform a certain type of complex procedure. When he found that his opportunity to use this procedure was very limited with this group, he was forced to pay a 6-figure buy out to move his practice to a center that could support his specialized skills. I know another cardiologist who moved from one health system to another and was required to practice > 20 miles away to observe a non-compete for nearly 2 years, inconveniencing and in some cases losing patients needing highly specialized care. I know several other cardiologists who were forced to leave their home states to observe onerous health system non-compete terms.

Numerous organizations, including the Federal Trade Commission[3], the American Medical Association[4], and the Maryland State Medical Society (MedChi)[5] have now recognized that non-compete clauses are an unreasonable restraint of trade that are being abused by large corporations (including health systems) for private advantage at the expense of patients, workers, and the public good.

Opposition to this bill on the grounds that it would cause significant disruption to Maryland's health care market is not supported by the facts. Twelve US states, including California and Massachusetts, have laws barring or severely limiting physician non-competes

and retain thriving hospitals, health systems and physician practices[1]. Maryland should join them.

I ask for a FAVORABLE report for SB1182. Thank you for your consideration.

Sincerely,

Joseph E. Marine, MD, FACC
Cockeysville, MD 21030
marinejoseph@hotmail.com
Mobile 443-791-4932

References:

1. Marshall JJ, et al. Restrictive covenants and non-compete clauses for physicians. JACC Advances 2023; 2(7). https://www.jacc.org/doi/10.1016/j.jacadv.2023.100547

2. ACC Submits Comments to FTC on Non-Compete Proposed Rule. April 6, 2023. https://www.acc.org/latest-in-cardiology/articles/2023/04/06/14/02/acc-submits-comments-to-ftc-on-non-compete-proposed-rule

3. FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition. January 5, 2023. https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition

4. AMA backs effort to ban many physician noncompete provisions. June 13, 2023. https://www.ama-assn.org/medical-residents/transition-resident-attending/ama-backs-effort-ban-many-physician-noncompete

5. MedChi House of Delegates – Final Reports and Resolutions. October 28, 2023. Resolution 22-23 – Restrictive Covenants in Physician Contracts, page 6. https://www.medchi.org/Portals/18/files/Events/2023HOD/Final%20Reports%20and%20Resolutions%20Fall%202023.pdf?ver=2023-11-02-111659-023

Bill HB 1388 - Support.pdf
Uploaded by: Julia Miller
Position: FAV

Bill: HB 1388

SUPPORT (FAV)

Julia L Miller, VMD, cVMA
56 Fahnestock Road
Malvern, PA 19355

Statement:

Non-competes in the veterinary industry set aside ethical ability to treat patients and allow profits over veterinary care. Non-competes also incentivize toxic work-place conditions and "trap" associates, who are typically early in their career and debt-ridden, into positions that cause long-term mental health damage. I personally experienced this situation in Maryland as an equine veterinarian. I had an extensive 2-year non-compete clause at my first job out of my internship. The job that I anticipated to be a professional career motivating position, turned into a job that was toxic along with being asked to perform unethical/illegal procedures. I felt extremely stuck, since if I didn't conform, I would be out of a job and would have to up-root my whole life out of the area to find a new job. In the end, I couldn't continue at this particular practice and did end up taking a new job in PA, out of the non-compete. There are no "trade secrets" in medicine – the practitioners, their skill set and their personalities are what attract clients/patients. Non-competes for this type of work are unethical to both the associates and the animals who end up not receiving care especially during the current times of severe veterinary shortages.

Please consider the negative aspects of non-competes, including forcing veterinarians out of an industry that is facing shortages, causing determinantal sequalae to patient care, forcing associates to go against our ethical code of conduct and AVMA standards, and contributing to the veterinary mental health crisis.

Sincerely,

Julia L. Miller, VMD, cVMA

NASW Maryland - 2024 HB 1388 FAV - Non-Compete - S

Uploaded by: Karessa Proctor

Position: FAV

5750 Executive Drive, Suite 100, Baltimore, MD 21228
410.788.1066 » nasw-md.org

NASW MARYLAND CHAPTER
National Association of Social Workers

Senate Finance Committee
March 28, 2024

House Bill 1388
Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

*****SUPPORT*****

The National Association of Social Workers – Maryland Chapter, an organization representing social workers statewide are writing on behalf of our community of private practitioners. We come together to express our unequivocal support for House Bill 1388, which seeks to amend the Labor and Employment Article, Section 3–716, of the Annotated Code of Maryland. This amendment is a monumental step towards fostering more equitable contracting opportunities for social work entrepreneurial licensed practitioners in independent social work private practice.

As dedicated professionals who have devoted our careers to the health and well-being of Marylanders, we often find ourselves constrained by noncompete and conflict of interest clauses in our employment contracts. These provisions not only restrict our ability to move freely within our profession but also impede our aspiration to venture into entrepreneurial endeavors, thereby stifling innovation and competition within our industries.

The Current Challenge

Many of us have encountered significant barriers when attempting to start our own practices or join other group practices due to the restrictive covenants embedded in our previous or current employment agreements. These clauses limit our professional growth and the ability to serve our communities better by leveraging our skills, experiences, and the relationships we've built over years of service.

The Solution Offered by House Bill 1388

House Bill 1388 represents a critical step forward in eliminating these barriers. By nullifying noncompete and conflict of interest provisions for employees earning up to 150% of the state minimum wage rate or those required to be licensed under the Health Occupations Article, this bill directly supports our rights to professional mobility and entrepreneurship. Moreover, its retroactive application ensures fairness and opportunity for those currently bound by existing contracts.

(over)

The Importance of This Bill

1. Enhanced Access to Care: By removing these restrictions, the bill will enable more professionals to enter the market, thereby increasing access to mental health care and Maryland. Competition drives not only innovation but also makes services more accessible and affordable for our communities.

2. Professional Growth and Innovation: Freed from these constraints, professionals can pursue opportunities that best align with their expertise and passions, fostering an environment of continuous learning, innovation, and improvement in client care.

3. Economic Development: Encouraging the establishment of new practices and businesses leads to job creation, economic growth, and more robust health care in Maryland.

Conclusion

Considering the above, we urge the Maryland General Assembly to pass House Bill 1388. This bill not only aligns with the principles of fairness and professional autonomy but also promotes a more competitive and innovative health care industry in Maryland. We stand ready to support this bill and contribute to the advancement of our professions for the betterment of our communities.

Respectfully,

NASW Maryland Private Practice Committee

HB 1388 TESTIMONY.pdf
Uploaded by: Ken Caniglia
Position: FAV

HB 1388 Written Testimony, in FAVOR of bill:

Ken Caniglia

13720 Edelen Dr

Bryantown, MD 20617

“In 2017, I was told that my white cell count was through the roof and I needed to see an Oncologist immediately. I selected a local clinic which had a group of doctors and selected one to see based on there bio. She understood the severity of the condition and immediately saw me. On my first visit, she diagnosed my illness (Mantle Cell Lymphoma), took a bone marrow sample to confirm and called the head of the Bone Marrow Transplant Dept at UofM to discuss my treatment plan. Based on that effort, my treatment started and 4 months later I was in remission. I was then admitted to UofM for a Stem Cell Transplant with the same head of the Dept. After 6 months total, I was back at home. If it wasn’t for the initial doctors actions, I might not have gotten the care I needed or the connection with the Dept Head at UofM. To this day, I still see both of them since my cancer could come back. I will follow both of them, where ever they may relocate, since they saved my life and I have established a strong relationship with them. They have both discussed with me follow on treatment if my cancer returns and I trust my life in their hands. A Non Compete might get in the way of receiving the life saving care that these doctors have provided me. They know my condition, I trust them and they would be the best ones to save my life, no matter where they are practicing.

Additionally, restricting someone from practicing in the area sound unconstitutional. Training reimbursement, transfer of intellectual property and poaching clients should be addressed seperately, not through an overarching “Non Compete”.

SB.HB1388 Labor and Employment Testimony- Linda Ca

Uploaded by: Linda Callahan

Position: FAV

SB/HB1388 Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Written Testimony

Linda Callahan

221 Hidden Valley Road

Tracys Landing, MD 20779

I am writing to express my enthusiastic support for the proposed Bill SB/HB1388 concerning Labor and Employment, specifically addressing noncompete and conflict of interest clauses for veterinary and healthcare professionals. (FAV) As a concerned citizen and a mother of an up-and-coming sport horse competition rider, I am deeply invested in the well-being and care of our equine athletes.

Our journey in the world of competitive horse riding has introduced us to various challenges, one of which has been the limited access to specialized veterinary care due to noncompete agreements. Currently, we have had the privilege of working with Dr. Brittany, a veterinarian whose expertise and dedication have been instrumental in the health and performance of our horse. However, due to existing noncompete clauses in the area, we are now compelled to travel over an hour to receive care from Dr. Brittany, who is uniquely qualified to address the specific needs of our horses. In Addition to the level of care that Dr. Brittany and Dr. CJ offer, they provide me with a level of comfort. I did not grow up riding and have been on a learning curve over the past few years. They are patient, kind, and understanding of this so they always take the time to explain to me in a way I can understand what is going on and what I need to do for the best care of the horse and subsequently my child. This to me is invaluable.

The ramifications of this situation are profound. Having to transport a lame or injured horse over long distances merely to access appropriate veterinary care not only exacerbates the animal's condition but also adds unnecessary stress and expense for the owner. Furthermore, it jeopardizes the timely treatment and rehabilitation necessary for the horse to continue competing at a high level.

The essence of competitive horse riding lies not only in the skill and dedication of the rider but also in the comprehensive support network that ensures the well-being of the equine partner. As a mother deeply invested in my child's passion for equestrian sports, I strongly believe that we should have the freedom to choose the healthcare professionals best suited to meet the unique needs of our horses.

Passage of Bill SB/HB1388 would provide essential relief from the constraints imposed by noncompete agreements, empowering owners like myself to access specialized veterinary care without undue burdens. By allowing veterinarians the flexibility to practice within their areas of expertise and eliminating restrictive clauses, this bill would foster a healthier and more vibrant equine community, benefiting both horses and their dedicated caretakers which Southern Maryland desperately needs.

In conclusion, I urge you to consider the significant impact that Bill SB/HB1388 would have on the welfare of our beloved equine companions and the livelihoods of those who rely on their care. By supporting this bill, you would not only champion the rights of horse owners and riders but also uphold the fundamental principles of choice and access to quality healthcare.

Thank you for your attention to this matter, and I trust that you will give due consideration to the concerns and aspirations of the equestrian community.

Sincerely,

Linda Callahan

SUPPORT HB 1388.pdf
Uploaded by: Lorraine Diana
Position: FAV

SUPPORT HB 1388

March 28, 2024

I have been a nurse practitioner In Maryland for 43+ years. Non-compete clauses in employment contracts harm providers and patients as well.

Most non-compete clauses stipulate that once a provider leaves that employment, the employee cannot work in that area of specialty for 1-2 years within a 50 mile radius of all the offices associated with the employer. This often results in the employee having to move to another geographic area to practice, leaving behind an entire group of patients who no longer have access to their care. And, as you know, new providers are not easy to find, particularly in all the severe shortage areas in Maryland.

I have seen the damage done by non-compete clauses to patents and providers as well. There are economic damages as well as the trauma of losing a favorite health care provider.

Please eliminate this huge stumbling block to access to care in Maryland and favorable report on HB 1388.

Respectfully,

Lorraine Diana, MS, CRNP
301-980-8004

L.DiRienzo for SB 1182.pdf
Uploaded by: Lorraine DiRienzo
Position: FAV

My name is Lorraine DiRienzo and I am a Maryland horse owner in support of SB 1182/ HB 1388. Last fall, I had a terrifying experience when my horse went into atrial fibrillation. Terrified as I was thinking about what lie ahead, I was equally grateful to be navigating this diagnosis with an extraordinary vet who's cared for my horse for 5 years.

But right as we were figuring out the next steps, the rug was completely pulled out from under me. My vet had to leave his current practice and could no longer treat my horse at our barn due to a non-compete clause.

To deal with my horse's ongoing heart issue, I now have to transport him up to a hospital in Pennsylvania, several hours away. I do not have a trailer, so not only do I have to take off an entire day of work and arrange after-school child care, my barn manager also has to take off work to drive us there, adding hours of time and hundreds more dollars to an already expensive outing. The $100 assessment that our one vet could accomplish in a half hour barn visit now takes 6-8 hours and costs at least five times that much…. Money, I should mention that is leaving the state on a regular basis at every barn affected by this non-compete.

Even so, I know it could be worse. When another horse at our barn became ill and the non-compete prevented his longtime vet from coming to our barn to provide emergency care, the owner was forced to put her horse on a trailer in agonizing pain and drive two hours through beltway traffic to the equine hospital in Virginia. Sadly, that horse died the next day. Who knows if he might have lived had the vet who knew him best been able to come to our barn to treat him immediately.

I still feel completely lost not having my trusted vet follow up on my horse's ongoing health issues. I am terrified that we'll have a dire emergency of our own and won't be able to get someone out fast enough. Continuity of care has been shattered right when I needed it most.

Finding a local vet just to get *routine* care is getting harder and harder in Maryland. It can now take over a week to get a doctor out to see your horse and appointments are regularly delayed for hours or rescheduled again and again because the only vet available is also on call for emergencies. Enforcing a non-compete against this backdrop makes zero sense. There is clearly plenty of work to go around--far more in fact than the existing vets in our area can even handle.

Bottom line, I really don't understand why I as a consumer don't have a choice in who provides care to my animal. If the practice owner wishes to protect their investment there are other tools available – like non solicitation clauses or return of service agreements. Flat out prohibiting a patient from seeing their chosen doctor feels punitive to the humans and cruel to the animals.

Written Testimony SB 1182-HB1388 Malinda Lawrence.
Uploaded by: Malinda Lawrence
Position: FAV

RE: WRITTEN TESTIMONY IN FAVOR (FAV) OF **SB 1182 (HB 1388)**

TO: Honorable Senators, Senate Finance Committee

FROM: Malinda R. Lawrence, 1630 Shore Drive, Edgewater, MD 21037

DATE: Wednesday, March 27, 2024

Thank you for the opportunity to submit written testimony in support of SB 1182 (HB 1388).

My interest in this bill stems from my experience with veterinary emergencies as a long-time horse owner in Maryland. My sole surviving horse, now 19 years old, suffered life-threatening emergencies no fewer than four times in his life. Three of those required surgical intervention. On those occasions, his life was saved by the good fortune of close proximity to the emergency treatment that he needed. On two of those occasions his life was saved at a medical-surgical facility in the county where I live that no longer exists. In fact, to my knowledge, no such facility currently exists in the entire state of Maryland.

Were one of these same emergencies to happen to my horse tonight, here in Anne Arundel County, my only options would be to transport him to Leesburg, Virginia or New Bolton in Pennsylvania, and he would die. He would not have hours, and would not survive the trip.

In addition to losing our medical-surgical facility, in the 13 years I have lived in Maryland our county has lost numerous ambulatory-practice veterinarians as well; at least seven of whom I am personally aware. Meanwhile, we have gained few if any in the last several years. This is resulting in an acute shortage of emergency response coverage even of ambulatory vets able to treat a horse on site. Non-compete restrictions have played a role in many if not most of these losses. When practice groups evolve or reconfigure themselves, all but the founding member(s) are forced to relocate.

The remaining practitioners are oversubscribed to say the least. Since I first expressed an interest in this legislation, multiple people have shared with me harrowing stories of having recently sought emergency response only to be told that the on-call vet is already occupied with an emergency, or to receive no response at all. The number of emergencies seems to be rapidly outpacing the number of available vets at any given time. No one's veterinary business seems to be suffering from competition. On the contrary, we are all experiencing a continuously growing unmet need.

Many people also regard these sorts of restrictions as an unwelcome intrusion in or obstacle to their treating relationship with their veterinarian. For animals with lengthy and complicated medical histories, the forced relocation of one's treating professional is disruptive to say the least, and surely serves no genuine public policy interest.

Moreover, as a matter of economics, we have exchanged veterinary medical-surgical resources that could be an asset, drawing patients into Maryland, for a total absence of them, sending patients out of state instead. With them goes all of the economic activity that attends surgical treatment and hospitalization, such as hotel, restaurant, and gas station patronage.

In my view, this bill is perhaps the single most important and most effective measure the legislature could take to help alleviate this increasingly problematic situation.

Thank you all for your kind consideration of these concerns, and this important legislation.

Respectfully submitted,
Malinda R. Lawrence
Edgewater, Maryland

MHB Written Support of HB1388.pdf
Uploaded by: Maree Harrison-Brown
Position: FAV

Maree Harrison-Brown

Bill: HB 1388

Position: In Favor

I am a Maryland resident and the owner of an aging equine. Wolf Creek Equine has been my trusted veterinary practice servicing my horses needs from routine vaccines, Coggins and more recently lameness exams and treatment. My horse was initially under the care of Dr. Hartson, then when she departed the practice in September 2023 we moved under the care of Dr. Williamson who knowledgeable and caringly treated my horse during a lameness episode from September – November 2023.

With the departure of Dr. Williamson and Dr. Caniglia in late 2023, Wolf Creek Equine was left severely understaffed, having 3 excellent Veterinarians leave the practice in just a few short months.

When my horse presented with similar lameness symptoms in early January 2024 I was faced with a few options:

1. Seek an appointment with Wolf Creek, which given their staffing situation and the non-urgent nature of my case, would likely have seen my horse experience discomfort for a pro-longed period of time.
2. Find an alternative provider and establish a new care relationship.

It was while pursuing this second option that I discovered that Dr. Williamson had established her own practice, Chesapeake Equine Performance. Hoping to preserve continuity of care, I contacted Dr. Williamson who was willing to see my horse her being subject a Non-compete Clause with Wolf Creek Equine meant that I would need to trailer my lame horse 60+ miles round trip, for evaluation and treatment.

I chose to trailer my horse from Davidsonville across the Bay Bridge to a location outside of the Non-compete to secure timely medical treatment on January 26th.

The following day, on January 27th, there was a horrific multi-vehicle accident that occurred on the Bay Bridge, closing the bridge for many hours. Upon hearing this news, I felt very fortunate to have crossed safely with my horse the previous day. I feel a lot of empathy for people who were injured or impacted by the multiple hour delay; to have been stuck on that bridge with a lame horse in a trailer for multiple hours is a prospect I hadn't considered and something that will weigh heavily on my mind when faced with a similar decision.

The State of Maryland has a long and revered relationship with the Horse industry. In honor of this longstanding relationship, I feel we owe it to Maryland horse owners to make Veterinary services readily accessible. We can do this is through the voiding of prohibitive Non-compete and Conflict of Interest clauses in Employment Contracts for Veterinary Professionals. I therefore fully support the passing of HB1388.

2024 ACNM HB 1388 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

AFFILIATE OF AMERICAN COLLEGE of NURSE-MIDWIVES With women, for a lifetime®

Committee:	**Senate Finance Committee**
Bill:	**House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals**
Hearing Date:	**March 28, 2024**
Position:	**Support**

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) supports *House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals.* The bill prevents an employee who is licensed under the Health Occupations Article or who works as a veterinarian or veterinary technician from being held to a noncompete clause.

Current Maryland law only protects individuals who make 150% of less of the State minimum wage. Most health professionals, such as nurse-midwives and certified midwives, likely make over this amount. In January 2023, the Federal Trade Commission proposed a new rule to ban employers from imposing noncompete clauses on their workers.[i] However, no final rule has been issued, making this bill important to provide clarity on Maryland's position in this important public policy consideration.

ACNM is supportive of this legislation because noncompete clauses pose a challenge for health facilities and programs trying to recruit health professionals to fill vacancies. Our health care system needs maximum flexibility as Maryland faces a shortage in all types of settings. It is possible that some health professionals will need to move out-of-state to accept a new position.

We ask for a favorable report on this legislation. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

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[i] https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking

2024 LCPCM HB 1388 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

LICENSED CLINICAL PROFESSIONAL COUNSELORS OF MARYLAND

Committee:	**Senate Finance Committee**
Bill:	**House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals**
Hearing Date:	**March 28, 2024**
Position:	**Support**

The Licensed Clinical Professional Counselors of Maryland (LCPCM) supports *House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals.* The bill prevents an employee who is licensed under the Health Occupations Article or who works as a veterinarian or veterinary technician from being held to a noncompete clause.

Current Maryland law only prohibits noncompete employment agreements for individuals making 150% or less of minimum wage. Behavioral health practitioners, including licensed clinical professional counselors, likely make over this minimal threshold. Noncompete clauses can have an impact on continuity of care. If a practitioner cannot take a position within a certain vicinity, they may be forced to leave the area. As a result, their patients will need to seek other providers. For behavioral health, where it can take a long time to develop a therapeutic relationship, it is particularly disruptive when a patient has to switch providers.

It is possible that there will be federal action on this issue in the future. The Federal Trade Commission has proposed a new rule to ban employers from imposing noncompete clauses on their employees.[i] However, this rule has not been finalized. Given the severity of the health professional shortage, Maryland should move ahead with this legislation.

We ask for a favorable report. If we can provide any additional information, please contact Robyn Elliott at relliott@policypartners.net.

[i] https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking

2024 MdAPA HB 1388 House Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

The Maryland Academy of Physician Assistants

mdapa

To:	**House Health and Government Operations Committee**
Bill:	**House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals**
Hearing Date:	**March 5, 2024**
Position:	**Favorable**

The Maryland Academy of Physician Assistants supports *House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals.* The bill prevents an employee who is licensed under the Health Occupations Article or who works as a veterinarian or veterinary technician from being held to a noncompete clause.

The Commission to Study the Healthcare Workforce Shortage Crisis found that Maryland is behind other states in addressing health professional shortages. There are persistent and severe shortages in every health care setting.[i] Maryland is a small state that borders five jurisdictions. We may have Maryland health professionals, including physician assistants, who cross state lines for a new position because a noncompete clause prevents them from continuing to work in the same area.

We ask for a favorable report on this legislation. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

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[i] https://health.maryland.gov/docs/SB%20440%20Ch.%20708%20(2022)%20%E2%80%93%202023%20Final%20Report%20%E2%80%93%20Commission%20to%20Study%20the%20Heal.pdf

2024 MNA HB 1388 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

Committee:	**Senate Finance Committee**
Bill Number:	**House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals**
Hearing Date:	**March 28, 2024**
Position:	**Support**

The Maryland Nurses Association (MNA) supports *House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals.* The bill prevents an employee who is licensed under the Health Occupations Article or who works as a veterinarian or veterinary technician from being held to a noncompete clause.

MNA supports this bill because of the impact of noncompete employment agreements on the entire health care team, including nurses. When noncompete clauses are imposed, health care practitioners may have to leave the area when accepting a new position. Therefore, noncompete agreements can lead to the disruption of continuity of care.

According to the final report of the Commission to Study the Healthcare Workforce Shortage Crisis, found that Maryland is behind other states in addressing health professional shortages.[i] We cannot afford to lose health care practitioners to other states, yet is very easy for Maryland practitioners to work across state lines since our small state borders five jurisdictions. Noncompete agreements could force health care practitioners to move or travel if they switch positions.

In January 2023, the Federal Trade Commission proposed a new rule to ban employers from imposing noncompete clauses on their workers.[ii] However, no final rule has been issued, making this bill important to provide clarity on Maryland's position in this important public policy consideration.

Thank you for your consideration of our testimony, and we urge a favorable vote. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net.

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[i] https://health.maryland.gov/docs/SB%20440%20Ch.%20708%20(2022)%20%E2%80%93%202023%20Final%20Report%20%E2%80%93%20Commission%20to%20Study%20the%20Heal.pdf

[ii] https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking

HB1388 Favorable .pdf
Uploaded by: Sasha Hill
Position: FAV

HB 1388
Sasha Hill
Favorable

My name is Sasha Hill, and Brittany Williamson is my vet. She's also the reason i know that i want to be a sports medicine vet. Being able to shadow both her and Dr. Caniglia over the summer of 2023 was hugely influential to that, and the non compete that they are currently limited by prevents me and other people like me from being able to learn from them nearly as readily. Both of their talent and dedication is inspiring to the next generation of students and owners alike, and with the upcoming shortage of equine vets the importance of their influence is beyond significant.

As a client of Dr. Williamson, it was so reassuring to have her and Dr. Caniglia available and so close. Now, under the non compete, it's much harder to coordinate meeting up with them, particularly if you have to involve a third party to

transport your horse outside of the 30 mile radius. Especially in emergent situations this isn't only inconvenient, but could be the difference between catching an illness or injury in time to save, or being too late. Dr. Williamson has helped through the entire history of my horses rather confusing injury, and she knows his history inside and out. Starting over with another vet would be financially and emotionally exhausting.

From every angle that I experience the effects of this noncompete, it is only harmful. As a client and hopeful student, I ask that you choose to help the people who rely on Dr. Williamson and Dr. Caniglia for their animals health and well-being.

Thank you,
Sasha Hill

Written Testimony Senate Sharon Caniglia.pdf
Uploaded by: Sharon Caniglia
Position: FAV

Written testimony by and in support of bill HB 1388/ SB 1182

Sharon Caniglia

800 Reilly Rd

Deale, MD 20751

Dear Honorable Senators of the State of Maryland. I submit this written testimony in favor of HB 1388/SB 1182 to prohibit non-compete agreements in health care and veterinary professions. I support this bill from a position of a family member of two dedicated, highly skilled, professional, and hard working veterinarians. My son specializes in the critical care of horses. He is a diplomat of the American College of Veterinary Surgeons. My daugher-in-law specializes in equine lameness and sports medicine. They are currently not able to practice veterinary medicine in a large portion of the state of Maryland due to non-compete clauses in their contracts from their previous employer. After almost six years of working at a local veterinary practice, and they were the longest working associate vets in the history of that practice, they tenured their resignations. The owner did not fulfill several clauses within their contracts; including a clause that they would be offered a buy-in agreement after three years of employment. They attempted on multiple occasions to discuss the issues with the employer to no avail. They continued to work for the clinic for the next three years for the benefit of other employees who depended upon them, and to serve their clients and their horses. The work environment became toxic and deteriorated on a daily basis. They submitted their resignations last November. The non-compete clause in their contracts forces them to move out of area or drive significant miles every day outside of the non-compete radius to practice their profession. They also have the option to leave the profession that they have trained for so long to practice. There is already an extreme shortage of large animal veterinarians across the country. My son spent twelve years in school, internship, and residency to train for his profession as a surgeon. The non-compete clause impacts not only my son and daughter-in-law, but their two small children, their family members (including myself), as well as countless clients and horses who will suffer without their care. Ten support staff members, who very much depend on every paycheck, were also forced to find new and (in some cases) lower paying jobs, as a result of the situation.

I am a recently retired educator and administrator with 44 years of experience. I can tell you that when you lose an excellent teacher from your local area, it is extremely difficult to replace them because of fewer teachers going into the profession-similar to fewer veterinarians going into the profession. Support of HB 1388 would help to keep excellent medical professionals and veterinarians within the state of Maryland.

One month after I retired, I dehydrated myself working in my yard that sent me into a medical emergency. I spent several days in the hospital on IV infusions. I share this personal experience for two reasons. First- it was my son who took me to the hospital. His medical knowledge helped me to recognize the seriousness of the situation and his ability to take me in person helped me to

overcome my fear of doctors and hospitals. Secondly- I have a fear of doctors but because of my medical emergency, I have finally found a doctor who I am comfortable with and whom I trust. I would not want to have to change my doctor because of a non-compete clause in his contract. I am sure that horse owners feel the same about trusting and finding a skilled veterinarian to treat or operate on their horses.

I also moved from my home of 40 years to be closer to my son, daughter-in-law and their two children. It would be an extreme hardship for all of us if they had to move because of a non-compete clause that violates the public interest in so many ways.

Non-compete clauses are anti-business, anti-freedom and contrary to the American way. Consumers, clients, customers, and especially patients should be able to choose their own doctors, nurses, medical personnel and veterinarians who best meet their needs. Please support the passage of HB 1388/SB1182. It is important for the community, the medical profession and the veterinary community in Maryland.

Thank you for your public service to your committee and the state of Maryland. Thank you for your support of HB 1388/SB 1182. Sincerely,

Sharon Caniglia

240-838-9669

MD SB1182 submittal.pdf
Uploaded by: Shaun Gandia
Position: FAV

Support (FAV) for SB 1182

March 27th, 2024

Shaun Gandia

SB 1182

- Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals
  - Applying to certain veterinary and health care professionals certain provisions of law stating that certain noncompete and conflict of interest provisions in certain employment contracts are null and void as being against the public policy of the State; and applying the Act retroactively.

Extreme Equine Veterinary Shortage in MD

- MD is home to about 95,000 horses
  - From the 2023 Economic Impact Study of the MD Horse Industry by the American Horse Council Foundation:
    - Total Value Added to MD economy: $1.77 Billion
    - Employment Impact: 28,434 jobs
    - Total Economic Impact in MD: $2.9 Billion
- From the MD Board of Veterinary Medical Examiners:
  - Total Licensed Veterinarians: 3303
  - **Veterinarians servicing horses: 94 (~2.8%)**
- **OVER 1000 HORSES PER EQUINE VETERINARIAN**

Who am I?

- Lifelong equestrian
  - Rode before I walked
  - Horse show competitor through childhood, college, early career years all across the US
- US Air Force Veteran
- Turned Professional Trainer and Competitor
  - Lesson, Training, and Boarding operations in SC and FL
- “Semi-retired” and moved to MD to be with my Army husband
- Volunteer at Horse Rescue and Therapeutic Riding Program
- Veterinary Technician at local Equine Hospital

Why do I care?

- My Horses currently have No Vet Care
  - Went to work for local Vet Practice that I was a client of since moving to MD
  - Extremely toxic work environment and poor management
  - Let go (along with 10 other techs) after 3 vets left within 5 months → viewed as being "on their side"
- I have been "fired as a client"
- The other vets from the practice cannot see my horses at my farm due to a non-compete clause in their contracts
- I have no relationship with any other local vets that are already over-taxed

What do I want?

- I want to choose whatever vet I want for my horses regardless of who they work for.
  - Trust and confidence with a doctor grows over time; this relationship is invaluable and difficult to replace
- Non-compete clauses need to be eliminated from veterinary employment contracts
  - Equine veterinarians are already in short supply
    - Hard working conditions with 24/7 on-call; traveling to remote locations; large animals with increased risk of injury
  - Local practice alone has gone through 17 equine veterinarians that have been forced to move to small animal practice or move out of the area

Thank you!

Shaun Gandia
9300 Croom Acres Terrace
Upper Marlboro, MD 20772
(904) 910-9839
shaungandia77@gmail.com

SenateHB1388TestimonyAAEDC.pdf
Uploaded by: Shelley Garrett
Position: FAV

ANNE ARUNDEL
ECONOMIC DEVELOPMENT CORPORATION

March 27, 2024

Senator Pam Beidle, Chairperson
Senate Finance Committee
11 Bladen Street
Annapolis, MD 21401

Favorable
HB1388/SB1182
Labor and Employment– Noncompete and Conflict of Interest Clauses– Veterinary and Health Care Professionals

Dear Senator Beidle and Senate Finance Committee Members,

I am the Agriculture Business Development Director for the Anne Arundel Economic Development Corporation, a quasi-governmental organization in Anne Arundel County with the mission to support businesses and serve as a catalyst for business growth to increase jobs, expand the tax base, and improve quality of life. I speak in support of House Bill 1388 for both my department and County Executive Steuart Pittman.

Agriculture is Maryland's largest commercial industry, contributing over 8 billion dollars annually to the economy. There are over 94,000 horses in Maryland with a 2.9-billion-dollar economic impact. 1.24-billion dollars goes to 28,434 industry job wages, with 1.77-billion contributing to value added, and 982-million dollars is spent by participants and spectators on equine tourism. Nearly 5,000 horses and only six equine veterinarians reside within Anne Arundel County. Two of those vets are banned from practicing within the county due to non-competes. One of those two is the only Board-Certified surgeon that accepted surgical cases in Maryland after hours. The removal of accessibility to these vet's services forces owners to transport sick or injured horses out of the radius. In the case of emergencies, the closest surgical centers are in Leesburg, Virginia and New Bolton, Pennsylvania. Services that previously could be provided by a visit to your farm or a short trailer ride to the equine hospital now are forcing your constituents to travel unnecessarily far distances to have access to their medical care. This adds unnecessary stress to the animal and the delay in treatment jeopardizes successful outcomes.

Sasha Hill, an aspiring equine veterinarian has submitted written testimony to you on the inability for her to gain field experience due to a non-compete. Ms. Hill previously would travel with Dr. Brittany Williamson to gain hands-on experience in the equine medicine field. Dr. Williamson is one of the veterinarian's held to a non-compete. Veterinary students are unable to schedule long distance drives to meet veterinarians that cannot practice in their home area and continue to thrive in their educational schedules. Ready access to field education is pertinent to develop skills that cannot be taught in the classroom. A national shortage of 15,000 veterinarians

is expected by 2025. Only 1.5% of veterinary students graduate and enter equine medicine. 50% of those leave their path within 5 years. The allowance of non-competes prevent our youth from obtaining experience and education. Maryland agriculture needs vets, not non-competes.

The question has been posed on the viability of current businesses should this bill pass. Those same businesses offer that the solution to inaccessibility is to buy out the non-compete. Further demonstrating that veterinary non-competes are for profits, not animal welfare.
Those businesses will still exist should their business models and standard of care meet owner and animal welfare expectations of Do No Harm.

In addition, the Maryland Hospital Association argues the loss of non-compete contracts will cause a shortage in doctors for rural areas. The only shortage caused by non-competes is access to medical care professionals by the public. If a doctor or veterinarian must leave a practice for hostile workplace or uphold Do No Harm oaths, non-competes effectively remove them from the radius surrounding that practice. Non-competes are the only factor causing doctor shortage and patient access to health care. Non-competes are against the public health interest.

Non-competes bind unknowing third parties to the contract: the animal, the owner, and the student. This cost is transferred to the health of the animals that Maryland's agriculture relies on. We ask that the Senate Finance Committee give this bill a favorable vote for the good of the public, the agriculture of Maryland, the furtherance of education and most importantly: the animals. Thank you for your consideration.

Sincerely,

Shelley Garrett

Shelley Garrett
Agriculture Business Development Director
Anne Arundel Economic Development Corporation

HB1388 (Senate)_FAV_Dr. Goel - Final.pdf
Uploaded by: Sonny Goel
Position: FAV

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Terri A. Hill

FROM: Sonny Goel, M.D.

DATE: March 28, 2024

RE: **SUPPORT** for House Bill 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Thank you for considering this letter in support of HB 1388, sponsored by Delegate Dr. Hill.

Restrictive covenants for physicians are jeopardizing patient care in Maryland. Not only are patients losing access to skilled doctors and surgeons, but these clauses are also adding pressure to a system suffering from a shortage of physicians. The surrounding states are more than happy to welcome our doctors and surgeons who are being forced out of Maryland, uprooting their children from their schools and abandoning Maryland patients. I have a friend who had to relocate her whole family to California because of her restrictive covenant – where such covenants are outlawed.

As one of the most experienced LASIK surgeons in Maryland, I was sued by my former employer when I quit due to unsafe patient care initiatives in the quest for greater profits. I successfully defended myself over a prolonged 16-month legal battle which cost me over $300k and still causes me PTSD 4 years later. During this period, local citizens did not have full access to my ability to provide experienced ophthalmology care.

Recently an anesthesia company was kicked out of a local hospital because they could not adequately staff surgeries. As the hospital tried to regroup and restart offering surgical services, this same anesthesia company sued any former employees who tried to work for this hospital. Patients suffered due to canceled procedures. The hospital suffered and came under extreme financial strain.

Two days ago, NBC News reported the prevalence of non-competes has increased as more doctors are employed by hospitals or private equity groups. The American Medical Association and American College of Surgeons say the agreements can contribute to doctor shortages, cut doctor-patient relationships, and scare doctors from speaking out about unsafe practices for fear of being fired and unable to work locally due to the restriction. This will force doctors to move elsewhere.

I am not here for myself. My time of being caught in the vortex of a restrictive covenant is behind me, thank goodness. Instead, I am here to advocate for my colleagues who have gone through extensive training to provide expert and compassionate care to their patients. Trapping them in non-competes with stressful working conditions increases physician burn-out and forces doctors to leave Maryland and abandon their patients.

For the good of our healthcare workforce and for all Maryland patients, please support HB 1388. Thank you for your time.

HB 1388 - FIN - MBON - LOSAA.docx (2).pdf
Uploaded by: State of Maryland (MD)
Position: FAV

Maryland
DEPARTMENT OF HEALTH

Board of Nursing

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 21, 2024

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

RE: HB 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals – Letter of Support as Amended

Dear Chair Beidle and Committee Members:

The Maryland Board of Nursing (the Board) respectfully submits this letter of support, as amended, for House Bill (HB) 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals. This bill applies to certain veterinary and health care professionals certain provisions of law stating that certain noncompete and conflict of interest provisions in certain employment contracts are null and void as being against the public policy of the State.

Limiting or nullifying the impact of noncompete and conflict of interest provisions can have a transformative effect on the employment market. This bill's provisions could help to strengthen the workforce by allowing workers to more freely move through the market to find employment in their field, which is of particular importance in the nursing profession, where we have long faced staffing shortages. Additionally, this bill would strengthen the incentives for employers to make workplace conditions and wages better for workers, thus reducing turnover and improving retention. Not only do nurses deserve these improved conditions, but they could attract more potential nurses to the workforce as well. We applaud any effort to strengthen the nursing profession and its reach, to improve access to care across our communities. In fact, better nurse retention can improve continuity and quality of care, which benefits us all.

For the reasons discussed above, the Maryland Board of Nursing respectfully submits this letter of support, as amended, for HB 1388.

I hope this information is useful. For more information, please contact Ms. Mitzi Fishman, Director of Legislative Affairs, at 410-585-2049 or mitzi.fishman@maryland.gov, or Ms. Rhonda Scott, Executive Director, at 410-585-1953 or rhonda.scott2@maryland.gov.

Sincerely,

Gary N. Hicks
Board President

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

Anne Arundel County_FAV_HB1388 (Senate).pdf
Uploaded by: Steuart Pittman
Position: FAV

ANNE ARUNDEL COUNTY
MARYLAND
County Executive Steuart Pittman

March 28, 2024

House Bill 1388
Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals
Senate Finance Committee

I write in strong support of HB 1388.

While it is common knowledge that noncompete clauses in employment contracts are being banned in some states because they sever long standing relationships between doctors and their patients, the crisis that these clauses create in large animal veterinary practice is less known.

Maryland has more horses per square mile than any state in the nation, but very few equine veterinarians. In Anne Arundel County we have close to 5,000 horses on a thousand properties, but only six veterinarians to care for them. Of those six, two are banned from practice in the area by a former employer, and one of those two is the only board-certified surgeon.

We've been here before in our county. At least a dozen equine veterinarians came here to work in practices that required non-compete contracts and were later forced out of the area. That's bad for the largest sector of our agriculture industry, and it's inhumane to the animals needing care.

We can't make more people choose the lower pay and longer hours of large animal medicine when they graduate from vet school, but we can give the ones who do make that choice the dignity of practicing in the areas where they are needed and are known.

The movement to ban non competes in both human health care and veterinary medicine is growing fast across the country, driven by workforce shortages and a basic belief that individual businesses should not have the right to ban competition.

The American Medical Association Principles of Medical Ethics specifically discourages the use of noncompete clauses in employment contracts. Maryland bans non competes already in the profession of law.

I ask that the committee give this bill a favorable report.

Steuart Pittman

County Executive

HB1388 (Senate)_MedChi, MDAFP, MDACEP, MDACOG, MDA
Uploaded by: Steve Wise
Position: FAV

The Maryland State Medical Society
1211 Cathedral Street
Baltimore, MD 21201-5516
410.539.0872
Fax: 410.547.0915
1.800.492.1056
www.medchi.org

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Terri A. Hill

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: March 28, 2024

RE: **SUPPORT** – House Bill 1388 – *Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals*

On behalf of The Maryland State Medical Society, the Maryland Academy of Family Physicians, the Maryland Chapter of the American College of Emergency Physicians, the Maryland Section of The American College of Obstetricians and Gynecologists, the Maryland Chapter of the American Academy of Pediatrics, and the Maryland/District of Columbia Society of Clinical Oncology, we submit this letter of **support** for House Bill 1388.

House Bill 1388 would prohibit non-compete clauses in employment contracts affecting licensed health occupations, including physicians. A non-compete clause prevents an employee, upon termination of the agreement, from accepting employment in the same field within a certain geographic distance and for a set period of time. Such clauses have been upheld by Maryland courts, but for the reasons set forth below it is time for the General Assembly to intercede and prohibit their use.

This Committee is well aware of the shortage of physicians and other licensed health occupations in the State. Non-compete clauses contribute to the problem. Physicians who are bound by them are sometimes precluded from accepting employment, not only in the area surrounding their usual workplace, but also areas surrounding other health care facilities owned by the same employer in other parts of the State. Some physicians end up accepting employment in surrounding jurisdictions just to escape the geographic limitations of the non-compete, and this exacerbates the physician shortage.

This problem is only going to grow. The American Academy of Family Physicians estimates that 73% of all its members are employed, meaning these primary care physicians do not own their own practices and have signed employment agreements. Among younger family physicians, the percentage is around 90%, signaling that more and more physicians could be unreasonably restricted from remaining in Maryland due to non-compete

clauses. In 2011, only 59% of family physicians were employed. More broadly, the AMA Physician Practice Benchmark Survey revealed that across all specialties, most physicians are now employed.

When professional employees leave, perhaps the biggest concern of their employer is that they will take clients and other proprietary information with them. House Bill 1388 rightly prohibits this. The departing physician may not solicit clients to leave with them.

While one might view the signing of a non-compete clause as a matter between the employer and employee, in the case of health care workers, more than those two parties are affected. It impacts both current patients and potential patients who need access to a robust physician workforce. Non-compete clauses are at odds with this public policy goal, and the time has come for them to be prohibited in health care.

HB1388.Sponsor SenateTestimony.pdf
Uploaded by: Terri Hill
Position: FAV

TERRI L. HILL, M.D.
Legislative District 12A
Howard County

Health and Government Operations Committee

Subcommittees
Government Operations and Health Facilities
Public Health and Minority Health Disparities

THE MARYLAND HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

The Maryland House of Delegates

Annapolis Office
6 Bladen Street, Room 404
Annapolis, Maryland 21401

410-841-3378 | 301-858-3378
800-492-7122 *Ext.* 3378
Fax 410-841-3197 | 301-858-3197
Terri.Hill@house.state.md

March 28, 2024

SUPPORT

HB1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Dear Chair Beidle, Vice Chair Klausmeier, and Members of Finance Committee,

I am here to ask for your support of **HB1388,** which prohibits the use of noncompete clauses in healthcare workers' and veterinary workers' employment agreements. The bill applies to workers who must be licensed under the health occupations article (such as doctors and nurses) and workers licensed under Title 2, Subtitle 3 of the Agriculture Article (such as veterinarians and veterinary technicians).

A non-compete clause prohibits the employee at the end of their employment from becoming employed or establishing their own business within a specified distance from that employer for a specified period of time.

There are at least three lenses through which the advantages and disadvantages of employee noncompete agreements can be viewed: the employer's, the employee's, and the client's or patients. While balancing all interests is our responsibility, I believe it is the lens of the latter group through which the most light should be shown in a time when workforce shortages in the healthcare and, to a lesser extent, the veterinary arenas are at issue. The overall vacancy rate of positions for healthcare workers 12/31/2021 is 21.2%, and up to 37.7% for licensed practical (vocational) nurses.[1] As of 2022, the American Animal Hospital Association predicts a shortage of 15,000 veterinarians by 2030.[2]

In 2023, the American Medical Association voted to "oppose noncompete contracts for physicians in clinical practice who are employed by for-profit or nonprofit hospitals, hospital systems or staffing company employers." [3]

Employers will continue to have tools that are more than adequate to protect their employee recruitment and retention investments, including provisions for outlay reimbursement, prohibitions on sharing proprietary information, and retained ownership of patient lists.

HB1388 is an important, bipartisan piece of legislation that passed the House with a vote of 130 - 11.

I urge a favorable report.

Citations: 1 2022 State of Maryland's Health Care Workforce Report 2 AAHA Vet Shortages 3 AMA Urge End of Noncompete for Physician Contracts

HB 1388 Annapolis Letter Submission.pdf
Uploaded by: Wendy Lott
Position: FAV

BILL NUMBER – HB 1388

I am in FAVOR of this bill.

Wendy Lott- Owner of Wito Hollow Farm LLC

6089 Fishers Station Rd. Lothian MD 20711

This bill can affect all of us sitting or standing in this room and those of you reading my entire testimony. This is personal to all of us, giving us the right to choose who we want for health care for our family members, pets, and livestock. Pets and Livestock are also considered family to many of us.

I am a horse owner, dog owner, cat owner and I own a small business. I own a horse farm. On my farm I take care of horses, puppies, and dogs at Wito Hollow Farm. It is my responsibility for animals in my care to receive proper veterinary care. It is my responsibility to preserve the client-patient relationship with veterinarians of my choice or a client's choice. If there is a non-compete clause that is being invoked against a veterinarian of my choice or a client's choice, it hinders proper care for our animals.

I was previously a vet assistant at a local equine hospital, I have witnessed excellent surgeons and veterinarians forced to change their career paths when they wanted to continue working as an Equine Veterinarian. They had to leave the state of Maryland to practice Equine Medicine.

A non-compete clause prevents these health care workers from working within a certain mile radius of a current or previous employer. If I have a good relationship with a doctor or veterinarian and they decide to leave that practice they are not allowed to work within a certain milage range. That is not fair to me as a client if I want to continue to see that doctor or veterinarian to care for myself or my animals. Because of non competes as a consumer I am now forced to drive long distances to see who I want to see. Or use the proper specialist that was right in my area previously. This affects the elderly who can't drive, this affects people with special needs and animals with special needs. This can also be a large financial burden as well.

For those of you who don't know anything about horses. The horse doctors are usually ambulatory and drive out to our farms to see our horses. Some horse owners do not own a horse trailer to provide transportation for their horses. This makes it more imperative that we have more Equine Veterinarians to provide ambulatory services to our farms. Not everyone has the option to transport their horses. Especially in emergency situations. This also means that more horses are going to be euthanized because they can't be taken outside of that restrictive milage radius to be seen by the veterinarian or surgeon that needs to see the horses.

Right now, if one of my horses needs emergency surgery, due to the non-compete clause that affects an Equine surgeon who lives in Maryland. He is unable to provide emergency surgeries that can save my horse's life. I would have to drive to Leesburg Virginia -Marion DuPont Scott Equine Medical Center or to Kennett Square, Pennsylvania to the New Bolton Center for Equines, each being 2 hours away from me. Those are the two closest Emergency Equine Hospitals currently that can take horses in for emergency surgeries. That is a huge risk for my horse's life and my life traveling in an emergency situation.

There is a shortage of veterinarians in Maryland Why are we forcing them out with non-compete clauses? As one local equine (Horse Doctor) Veterinarian posted on her social media page. Where have all the Horse doctors gone? She warned people that we would see a shortage in horse vets to "be theatrical" and as she states "here we are. Here I am, one horse (vet) power. This veterinarian who stated this had nineteen veterinarians that have worked for her practice as past associates since she started her practice in 1998. She named fourteen of those veterinarians in her post. – she also stated that they had to make their own heart wrenching and difficult decision to change species of specialty or to leave the veterinary profession entirely. She goes on to say they leave due to long hours, on call duty, after hours, lower wages, and the interface with the public. But what she is NOT telling the public is she is the reason they can't continue to work as a "horse doctor" because she makes them ALL sign a NON-COMPETE clause. So, if they leave her practice they are not allowed to work as an equine practitioner within a certain milage radius of her practice, which directly affects hundreds of horse owners. She forces them to switch to a different job. Can they buy her out of the non-compete? Yes, that is offered but she makes it so expensive for them they can't afford to buy out the non-compete clause and then start over somewhere else that is local. Nor do they have the option to go to another local Equine Hospital to work within a certain milage radius. She also posted what the previous associates of hers are doing now. Out of all of the veterinarians she listed only four of them are practicing as Equine Veterinarians. They have moved out of state. Two are in Pennsylvania, one in New Mexico and one is in Mississippi. As she stated they were all FANTASTIC Equine practitioners. That is a bit hypocritical for her to say that they had to make a heart wrenching decision when she is the one that made that decision for them. If they don't sign a non-compete, they can't work for her hospital. Many new veterinarians getting out of college have their hands tied if they want a job as an equine practitioner. If they want to work, they have to sign a non-compete clause. But they should not have to make, as she puts it, a heart wrenching decision to switch to something else or get out of medicine all together. (SEE ATTACHED FOR HER ENTIRE FACEBOOK POST) She complains that here she is a "one horse (vet) holding down the fort. And that equine veterinarians are a dying breed. There could be nineteen equine vets working locally for me and other horse owners in Maryland right now if she didn't force them to sign a non-compete clause. Nineteen Fantastic Veterinarians.

Eliminating non-competes will open up more jobs and careers for people in Maryland, appointments for people who need to be seen and animals that need to be seen sooner rather than later.

Have you recently tried to get an appointment for your dog or cat with your veterinarian? There is a shortage of veterinarians and appointments are backed up for weeks. Some practices are so busy they can't take on new clients. We could definitely have more vets in Maryland by eliminating non-compete clauses.

Non-Compete clauses prevent and limits doctors, nurses, surgeons, veterinarians from working where they want to work. It deters specialty candidates from providing specialty care to patients in areas where it's needed. It prevents them from opening up their own practice in the area of their choice. They're bad for workers, consumers and bad for the economy. Businesses pay lower wages knowing they are holding a worker hostage with a non-compete clause. This also holds the consumer hostage to those who they are allowed to use. It takes the consumers' choices away from them. Do you want to be told which veterinarian or doctor you're allowed to use for your pet or loved

one? Do you want to be told who you can use as your personal doctor? A non-compete clause affects all of us.

Please support our families, our animals, and our businesses in Maryland by eliminating the non-compete clauses in the entire human medical industry and Veterinarian industry. In 2023 Maryland Census shows that we lost 22,000 citizens last year. Let's get more health care workers that are needed in Maryland. This leads to more job opportunities, better health care, healthier humans, and healthier pets. This will help keep people in Maryland. It will also bring more revenue for the State of Maryland. Let's keep citizens (doctors, nurses, veterinarians, and other health care workers) careers and jobs here in Maryland! Support HB 1388 and Eliminate Non-Compete Clauses in the Medical Industry!

Thank you,

Wendy Lott- Wito Hollow Farm LLC

6089 Fishers Station Rd.

Lothian, MD 20711

Wolf Creek Equine Hospital
Nov 17, 2023 ·

In my Christmas newsletter a few seasons ago I warned readers about the threat of equine veterinary shortages that was on the horizon. I promised in that newsletter that we would see these shortages ' in our lifetime', to be theatrical. And here we are. Here I am, one horse [vet] power.

Here is a list of some of my past associates, interns or locum surgeons and what they are doing today:

Delaney Hartson - small animal emergency care
Melissa Bryant - small animal emergency care
James Hart - teaching Anne Arundel schools
Manuella Sanchez – small animal practice, now Merck sales representative
Isabella Cortez – pharmaceutical sales representative
Julia Miller - equine practice in PA (husband transfer)
Britta Lawson – small animal veterinary care
Ben Schraumer - real estate sales
Caitlin O'Shea – professor large animal
Shannon Brown - equine practice in NM (husband transfer)
Simon Towel - small animal anesthesia sales rep
Peter Jeanettes - small animal emergency care
Elysia Shafer - small animal surgery
Bill Valentino – equine practice in FL (relocation after family emergency)

Being my associate did not drive these people from seeing horses. These beautiful people studied all about horses and love horses and some were truly

fantastic equine practitioners. Yet other forces drove them to make their own heart-wrenching and difficult decision to change species of specialty or to leave the veterinary profession entirely. In surveys conducted on a large scale, the reasons often listed for such departures are the long hours of equine practice, on-call duty after hours, lower wages (compared to other species), and the interface with the public. You can read more about this phenomenon, if your heart can take it, at https://thehorse.com/features/where-have-all-the-horse-vets-gone/

Whether you think of a business as a living organism or not, I will tell you that it is. It can be injured and it can be killed. It is said that the typical small business can endure 3 or 4 events a year that detract from daily operations and still continue to thrive. Those events do not necessarily need to be negative ones - having an open house, hosting a conference, or an essential employee on maternity leave are examples of positive events that affect daily operations. Examples of more negative events would include weather disasters, staff shortages due to injury or prolonged medical leave, essential pieces of equipment going down, supply shortages, legal actions, or resignation of key employees. Ever since COVID-19 shut downs in 2020, running a small business has been different, with even more nebulous challenges than these listed. Ask any small business owner or manager and they will share their woes.

I will tell you that this business in the last 12 months has had more than 4 events; I hesitate to count but

my rough guess would be upwards of 30. I have owned this business for many years and have always regarded myself as its secret weapon, performing many of my administrative duties from the passenger seat of my truck, in the evenings or Sunday afternoons. The business needs my attention to thrive. I have been working very hard to hold it all together. I assure you it will make it, but things will obviously change.

I don't know how to feel about this recent out-pouring of emotion in social media. I rarely visit social media due to my demanding schedule. I have staff members who monitor the social media feeds and I do contribute content with their prompting. Patrons have every right to be concerned when a practice goes from four doctors to one.

For the patrons of this practice who actually know me (because some actually do not), they know that I have a heart for service. I have always regarded my interface with the public as my mission field to help spread my love of the Lord and his creations. I do not withhold my knowledge and always strive to be helpful and available. I am not retiring and haven't really slowed down, although my schedule admittedly changed when I announced that I was no longer performing chiropractic evaluations and spinal manipulation. I grew up on a dairy farm in the Midwest and I have quite literally spent my entire life caring for animals. I possess a tremendous amount of knowledge about horses and their care. I also possess a nice facility that can be utilized to help animals. I have no intentions of leaving the profession

or closing the facility. Things will obviously change in the short term, but my vision for helping care for the horses in this region has not.

Wolf Creek Equine will get through this. I am not going anywhere. I built this practice from scratch and from nothing. Anyone who doubts me, stand back and watch me do it.
As hard as it is to do sometimes, THIS is the job I interviewed for. This is the job I want. I am here to help you.

Yours in Service
Susan Mende
Founder and owner of Wolf Creek Equine LL

thehorse.com
Where Have All the Horse Doctors Gone?

161 37 comments 15 shares

Like Send Share

Hb 1388 Favorable MANA.pdf
Uploaded by: William Kress
Position: FAV

The Maryland Association of Nurse Anesthetists

HB 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Before Senate Finance Committee

Position: Support

March 28, 2024

Madam Chair and members of the Senate Finance committee thank you for this opportunity to support HB 1388.

The Maryland Association of Nurse Anesthetists is a professional association with over 900 members who are practicing nurse anesthetists in Maryland.

A nurse anesthetist is permitted to administer anesthesia in collaboration with a physician, dentist, or anesthesiologist. If you undergo a procedure in Maryland, you are just as likely to receive anesthesia care from a nurse anesthetist as an anesthesiologist. Sometimes a nurse anesthetist works in an anesthesia team care model which includes an anesthesiologist but are and do deliver anesthesia without collaborating with an anesthesiologist.

MANA strongly supports HB 1388 and urges a favorable report.

Noncompete agreements have become a ubiquitous feature in many industries, intended to protect employers' interests and trade secrets. However, their presence in the healthcare sector raises significant ethical and practical concerns. Noncompete agreements for healthcare professionals, including physicians, nurses, and other essential providers, can have detrimental effects on patient care, workforce mobility, and the overall health system. Here's why prohibiting noncompete agreements for healthcare professionals is not just advisable but imperative.

1. **Patient Access and Care Continuity**: Noncompete agreements can restrict healthcare professionals from practicing within a certain geographic area or with certain patient populations after leaving their current employment. This limitation can severely impact patients' access to care, especially in underserved areas where healthcare providers may be scarce. Patients should have the freedom to choose their healthcare providers based on quality and accessibility, rather than being constrained by contractual obligations.

2. **Public Health Concerns**: Healthcare professionals play a crucial role in public health emergencies and pandemics. Prohibitive noncompete agreements can hinder the rapid deployment of healthcare workers to areas in need during crises. In situations where immediate access to care can mean the difference between life and death, any barrier to deploying skilled professionals must be removed.

3. **Workforce Mobility and Innovation**: Noncompete agreements can stifle professional growth and innovation within the healthcare industry. Restricting healthcare professionals from seeking better opportunities or starting their practices can lead to a stagnant workforce and impede the advancement of medical research and practices. Healthcare professionals should have the freedom to move between institutions, share knowledge, and contribute to the broader healthcare community's advancement.

4. **Quality of Care and Patient Trust**: Healthcare professionals are entrusted with their patients' well-being and must prioritize their patients' best interests above all else. Noncompete agreements that limit a professional's ability to continue caring for their patients can erode trust and compromise the quality of care. Patients should be able to maintain continuity with their trusted healthcare providers, fostering stronger patient-provider relationships and improving health outcomes.

5. **Legal and Ethical Considerations**: The enforcement of noncompete agreements in healthcare raises ethical questions about fairness and equity. Healthcare professionals, often bound by codes of ethics and duty to patients, may find themselves in ethical dilemmas when faced with restrictive employment contracts that impede their ability to provide care effectively. Moreover, the legality and enforceability of such agreements can vary widely across jurisdictions, leading to uncertainty and potential legal battles.

6. **Market Competition and Healthcare Costs**: Noncompete agreements can limit competition among healthcare providers, leading to monopolistic practices and inflated healthcare costs. When healthcare professionals are prevented from moving freely between employers, healthcare systems may face less pressure to offer competitive salaries, benefits, and working conditions. Ultimately, this can drive up healthcare costs for patients and insurers while reducing the overall quality of care.

In conclusion, the prohibition of noncompete agreements for healthcare professionals is essential to uphold patient access, workforce mobility, and the integrity of the

healthcare system. Policymakers, healthcare institutions, and professional organizations must work together to ensure that healthcare professionals are not unduly restricted by contractual obligations that compromise patient care and public health. By fostering a culture of professional mobility, collaboration, and patient-centered care, we can strengthen our healthcare system and improve outcomes for all.

Respectfully submitted,

Michelle Duell, CRNA

MANA Chair of Government Relations Committee

THE FACTS ABOUT NON-COMPETES IN HEALTH CARE

C.J. CANIGLIA, DVM, DACVS-LA

STATES WITH COMPLETE OR NEAR COMPLETE BANS

A non-partisan issue

Alabama

California

Colorado

Louisiana

Minnesota

North Dakota

Oklahoma

Washington D.C.

STATES WITH BANS SPECIFIC TO HEALTH CARE

A non-partisan issue

- Conneticut
- Delaware
- Indiana
- Iowa
- Florida
- Kentucky
- Massachusetts
- Maine
- Montana
- New Mexico
- South Dakota

Allowed but limited time/radius

- Tennessee
- West Virginia

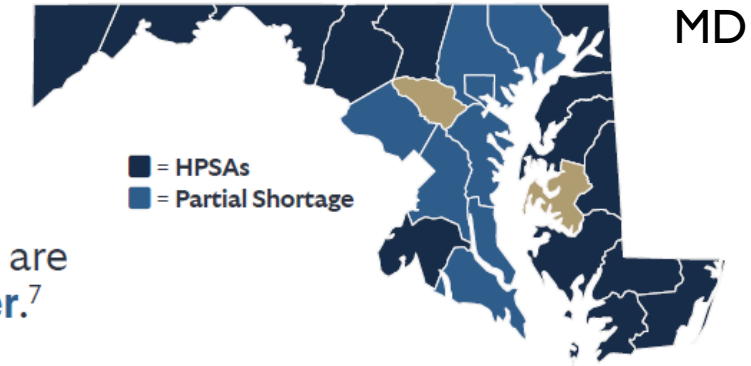
After non-competes were restricted, practices more likely to survive and grow larger relative to practices in states that continued enforcing health care non-competes[1]

1. Balasubramanian, N., Sakakibara, M., and Starr, E. Association between Physician Noncompete Agreements and Healthcare Access. https://ssrn.com/abstract=4630026

THE PHYSICIAN SHORTAGE IN MARYLAND

14 of Maryland's 24 counties are health professional shortage areas (HPSAs).[6]

- 8 of the 24 are partial HPSAs meaning **22/24 counties are affected.**
- **Low-income citizens** are disproportionately affected by these shortages.
- HPSA designations indicate areas where there are **3,500 or more patients for every one provider.**[7]



MD Compared to other States

35% worse for **family medicine/general practice**

Maryland is projected to be short 1,052 doctors by 2030.[3]

- **35.8% of physicians** in Maryland are current within retirement range.[4]
- The aging workforce is most prevalent in the **capital region and among surgical specialties.**[5]

1. Goldman, Devorah. "The Forgotten Physician." National Affairs, 2019. https://nationalaffairs.com/publications/detail/the-forgotten-physician.
2. Zhang, Xiaoming, Daniel W. Lin, Hugh Pforsich, and Vernon W. Lin. "Physician Workforce in the United States of America: Forecasting Nationwide Shortages." Human Resources for Health, February 6, 2020. https://doi.org/10.1186/s12960-020-0448-3.
3. The Robert Graham Center. "Maryland: Projecting Primary Care Physician Workforce." Policy Studies in Family Medicine and Primary Care. Accessed January 25, 2024. https://www.graham-center.org/content/dam/rgc/documents/maps-data-tools/state-collections/workforce-projections/Maryland.pdf.
4. AAMC. "Maryland Physician Workforce Profile." Association of American Medical Colleges, 2021. https://www.aamc.org/media/58211/download.
5. Barish, M.D., Chair Robert, and Secretary John Colmers. "Maryland Physician Workforce Study." MedChi, The Maryland State Medical Society, 2007. https://www.medchi.org/Portals/18/files/Law%20&%20Advocacy/Initiatives%20Page/Workforce%20Study%20Executive%20Summary.pdf?ver=2009-09-02-040000-000.
6. "Map of Health Professional Shortage Areas: Primary Care, by County, 2023 - Rural Health Information Hub," n.d. https://www.ruralhealthinfo.org/charts/5?state=MD.
7. KFF. "Primary Care Health Professional Shortage Areas (HPSAs) | KFF," November 1, 2023. https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Practitioners%20Needed%20to%20Remove%20HPSA%20Designation%22,%22sort%22:%22desc%22%7D.

THE NURSE SHORTAGE IN MARYLAND

2022 Maryland's Health Care Workforce Report
Maryland Hospital Association

JULY 2023

Maryland Nursing Programs $6 Million from the State to Help Address Nursing Shortage

Eliminating non-competes helps with shortage with zero financial cost to the State

THE VETERINARY SHORTAGE IN MARYLAND

Approx. 1.9 million dogs/cats

Approx. 269 million chickens

3,295 licensed veterinarians in MD with estimated only 2,900 practicing

Approx. 21,000 pigs

Approx. 100,000 horses

Approx. 243,000 cows

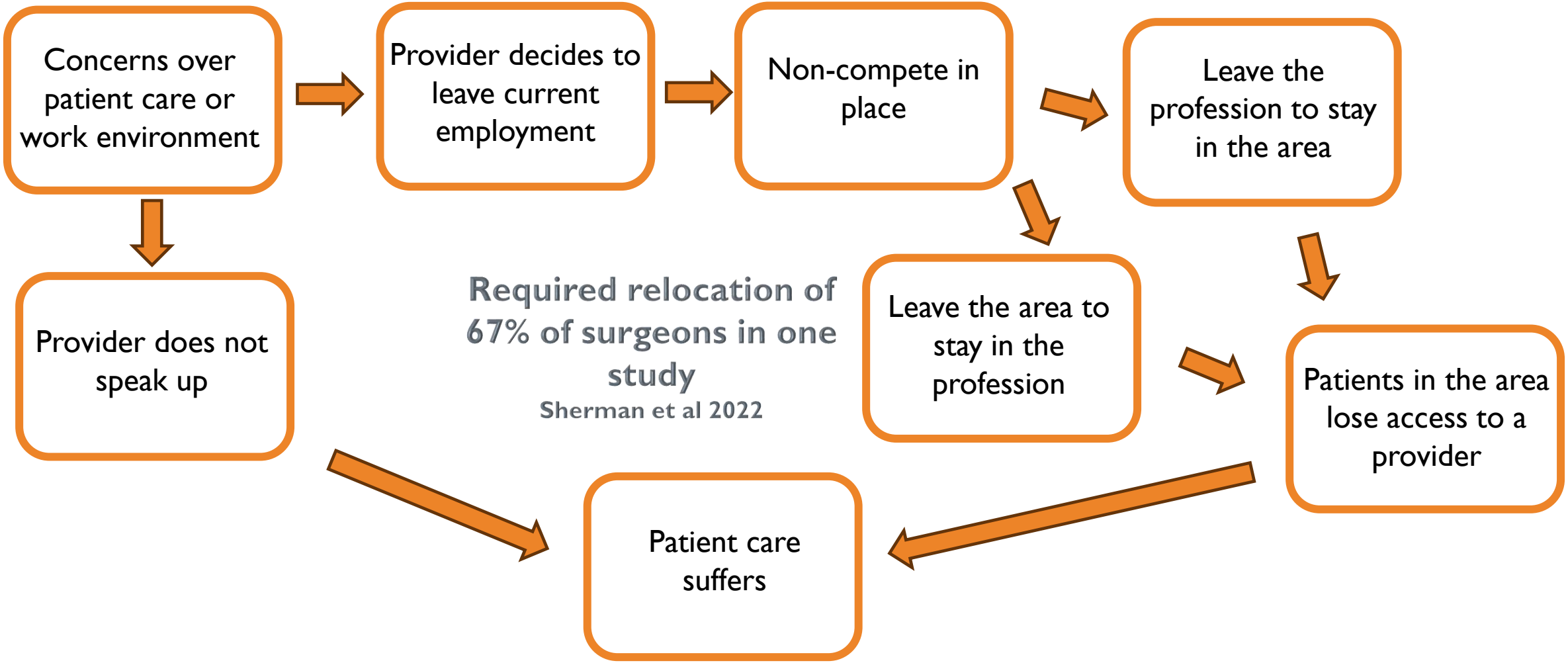
Only around 74 horse vets

Only 4 boarded large animal surgeons

Only 1 boarded large animal internist

AVMA Pet Ownership and Demographics Sourcebook
USDA/NASS 2022 State Agricultural Overview for MD
US Census 2023

HOW NON-COMPETES EXACERBATE SHORTAGES



Sherman WF, Patel AH, Ross BJ, Lee OC, Williams CS, Savoie FH. The Impact of a NonCompete Clause on Patient Care and Orthopaedic Surgeons in the State of Louisiana: Afraid of a Little Competition? Orthopedic Reviews. 2022;14(4).

MARYLAND HOSPITAL ASSOCIATION RECOMMENDATIONS

RECOMMENDATIONS FOR **POLICYMAKERS**

MHA recommends policymakers to pass legislation that promotes retention of health care workers

- A health care worker without a non-compete can change hospitals without fear of being forced out of state = healthcare worker retained
- Non-competes are an economic driver causing health care workers to leave the profession
- MHA opposition to HB 1388 does not match their recommendations

Retain the Health Care Workforce

1. Address social and economic drivers that cause health care workers to leave the profession, including the cost and availability of child and elder care
2. Establish a statewide workplace violence prevention consortium to provide training and support and recommend policy changes

2022 Maryland's Health Care Workforce Report
Maryland Hospital Association

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Anne Arundel Medical Center / Anne Arundel Physician Group example

- Hospital cut support staff, shut down oncology lab, and overall toxic work environment
  - Oncologists spoke up to improve patient care
    - Oncologists were terminated and non-competes enforced
      - Cancer patients were left with no continuity of care

Restricting access to doctors who leave due to concerns over patient care harms the public by subjecting them to substandard care

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Non-competes disrupt continuity of care

- Patients readmitted to the **same hospital** and managed by a **different surgeon** had **>2x risk of mortality** within a year than patients managed at the **same hospital** by the **same surgeon**[1]
- Patients with diabetes who see **different doctors** have a **higher mortality rate of 12%** compared to those who see the **same doctor** at **4%**[2]
- **82%** of studies assessed demonstrate that continuity of care by the **same provider reduces mortality rate**[3]
- Pet owners more likely to **trust treatment recommendations**, receive personalized care, and **better patient outcomes** when they have an established relationship with their veterinarian[4]

Continuity of care with the same provider, not the business, saves lives

1. Justiniano CF, Xu Z, Becerra AZ, Aquina CT, Boodry CI, Swanger A, Temple LK, Fleming FJ. Long-term Deleterious Impact of Surgeon Care Fragmentation After Colorectal Surgery on Survival: Continuity of Care Continues to Count. *Dis Colon Rectum*. 2017 Nov;60(11):1147-1154
2. Pan CC, Kung PT, Chiu LT, *et al*. Patients with diabetes in pay-for performance programs have better physician continuity of care and survival. *Am J Manag Care* 2017;23:e57–e66.
3. Pereira Gray, D., Sidaway-Lee, K., White, E., Thorne, A., and Evans, P. Continuity of care with doctors – a matter of life and death? A systematic review of continuity of care and mortality. *BMJ*. 2018 (8).
4. US Pet Market Outlook Report 2021-2022 Report

HOW NON-COMPETES VIOLATE THE PUBLIC INTEREST

Columbus Medical Services LLC v. Thomas 2010

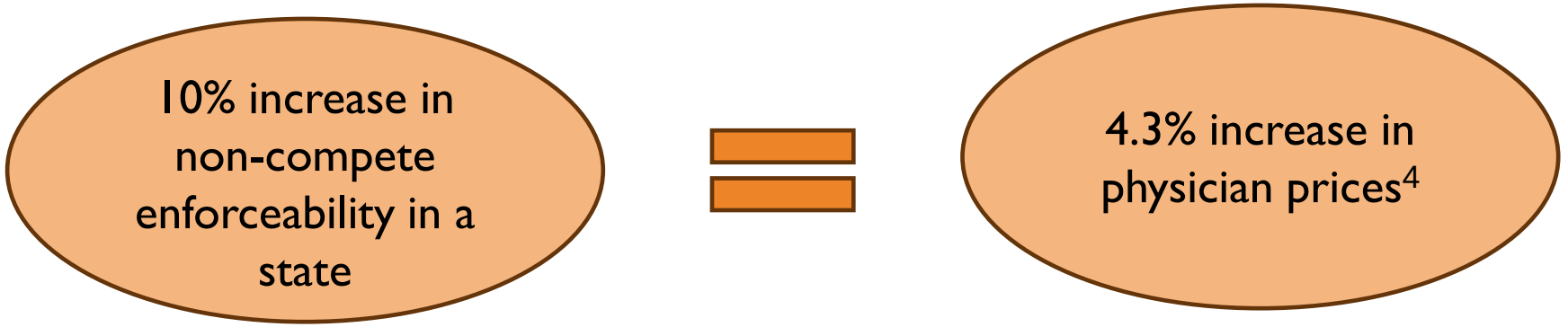
- Tennessee Supreme Court upheld the Court of Appeals ruling non-competes against the therapists **violated the public interest by disrupting the continuity of care.**
  - "The services provided by medical professionals such as physicians go well beyond merely providing goods or services."

Ellis v. McDaniels 1979

- Nevada Supreme Court established that loss of specialty medical care **endangered the public far in excess** of any perceived danger to the business interest
  - **Protecting the public interest** to retain access to these medical services is greater than the interest to protect the integrity of the contract

HOW NON-COMPETES INCREASE COST OF CARE

- Patients visiting the **same family physician** had **39% lower** total medical costs[1]
- Cost of veterinary care has increased faster than inflation for the last 20 years despite veterinary compensation decreasing[2,3]



Eliminating non-competes would reduce aggregate medical spending by $25 billion per year nationally[4]

1. De Maeseneer JM, De Prins L, Gosset C, Heyerick J. Provider continuity in family medicine: does it make a difference for total health care costs? *Ann Fam Med.* 2003;1(3):144-148.
2. Quedraogo F, Dicks M. Are rising veterinary salaries driving up the cost of care? *DVM360* . 2018
3. Einav I. Is American pet health care (also) uniquely inefficient? *American Economic Review: Papers & Proceedings*. 2017;107:491-495. [Google Scholar]
4. Hausman, Naomi, and Kurt Lavetti. 2021. "Physician Practice Organization and Negotiated Prices: Evidence from State Law Changes." *American Economic Journal: Applied Economics*, 13 (2): 258-96.

HOW NON-COMPETES INCREASE COSTS FOR HOSPITALS

Holy Cross Hospital v. American Anesthesiology Services of Florida;
St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse

- Both active lawsuits where hospitals state non-competes drive high prices and compel the hospital to accept the business' terms or face patient care disruptions and delays
- Costs hospitals millions to buy out non-competes to avoid interruptions in patient care

Greater Baltimore Medical Center / North American Partners in Anesthesia

- Cost hospital millions to buy out non-competes to avoid interruptions in patient care

United States and North Carolina v. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System

- 2018 settlement reached to prevent Carolina Healthcare System from using non-competes they had in place that drove up costs for patients

MHA opposition to HB 1388 could have significant costs to MD hospitals to continue to buy out non-competes

HOW NON-COMPETES PERMIT FRAUD

- Pediatrix billed the government and thus taxpayers for critical care services when the infants were not critically ill
- Pediatrix controls the doctors it employs with non-competes and mandatory arbitration to resolve disputes[1]
- With non-competes doctors faced retaliation if they spoke up
- **One brave doctor (Daniel Hall, M.D.) finally stood up to expose the fraud**
- The Office of the US Attorney for the District of Maryland led the case and Pediatrix ordered to pay settlement to the US government of **$25 million**

1. Kinney, E. 2008. The corporate transformation of medical specialty care: the exemplary case of neonatology. *J Law Med Ethics*. 36 (4) 790-802.

HOW NON-COMPETES DETER TALENT

Prohibiting non-competes for human and veterinary health professionals will attract talented professionals to Maryland

- **71% of surgeons** in one study stated a non-compete would deter them from accepting a job offer[1]
- National veterinary corporations are actively using "no non-compete" as a recruiting tool (Rarebreed Veterinary Partners, Suveto, Destination Pet, Noah's Animal Hospitals)
- Non-competes stifle innovation by **reducing new patents** by 16-19%, decreased break through inventions, **decreased productivity** by 30% [2,3]

1. Sherman WF, Patel AH, Ross BJ, Lee OC, Williams CS, Savoie FH. The Impact of a NonCompete Clause on Patient Care and Orthopaedic Surgeons in the State of Louisiana: Afraid of a Little Competition? Orthopedic Reviews. 2022;14(4).
2. Johnson, Matthew, Michael Lipsitz, and Alison Pei (2023), "The Enforceability of Noncompete Agreements and Innovation: Evidence from State Law Changes." NBER Working Paper 31487.
3. Mueller, Clemens (2022) "How Reduced Labor Mobility Can Lead to Inefficient Reallocation of Human Capital." https://conference.iza.org/conference_files/LaborMarkets_2022/mueller_c32517.pdf.

HOW NON-COMPETES CAUSE THIRD PARTY HARM

Banning non competes based on third-party harm has a long-standing tradition in the United States among lawyers

Non competes are prohibited in the practice of law based on Rule 5.6 of the American Bar Association because:

> *"An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer."*

Harm to consumers comes from:

1. Higher prices
2. Lower quality
2. Reduced output

Despite not having non-competes the legal profession is **thriving**

55% increase in wages of lawyers over past 20 years

5% increase in number of lawyers over past 10 years

$248 billion industry in 2012 to **$331 billion** in 2024

https://www.statista.com/forecasts/409737/offices-of-lawyers-revenue-in-the-us

American Bar Association Profile of the Legal Profession Report 2023

MORE HARM CAUSED BY NON-COMPETES

Small businesses are negatively impacted by non-competes

- 35% of small business owners prevented from hiring an employee due to a non-compete[1]
- 59% of small business owners approve of the FTC proposed rule to ban non-competes[1]

➡ ***Negative economic impact of a non-compete ripples to other small businesses in the industry***

Veterinary suicide rate averages **4x** the general population[2,3]

- Work-related stress is a major cause of depression for veterinarians[2]

➡ ***Non-competes prevent veterinarians from changing their working environment***

1. https://smallbusinessmajority.org/sites/default/files/research-reports/2023-non-compete-poll-report.pdf
2. Tomasi SE, Fechter-Leggett ED, Edwards NT, Reddish AD, Crosby AE, Nett RJ. Suicide among veterinarians in the United States from 1979 through 2015. J Am Vet Med Assoc. 2019 Jan 1;254(1):104-112.
3. Suicide Rates by Industry and Occupation — National Vital Statistics System, United States, CDC Report 2021

WHAT HB 1388 / SB 1182 ACCOMPLISHES

This bill **allows**:

1. Confidentiality Agreements
2. Non-solicitation Clauses
3. Return of Service Agreements

So hospitals and practice owners can protect their investment

This bill **prohibits**:

1. Non-compete Agreements

So patients can protect their right to choose their health care

So providers can stay in the local community

So cost of health care will decrease and quality of care will increase

WHY LEGISLATION IS NEEDED

Left solely to the courts to decide case precedent, many health care workers will never challenge their non-competes and this case precedent is slow to bring about change

"For every covenant that finds its way to court, there are thousands which exercise an **in terrorem** effect on employees who respect their contractual obligations and on competitors who fear legal complications if they employ a covenantor, or who are anxious to maintain gentlemanly relations with their competitors. Thus, the mobility of untold numbers of employees is restricted by the intimidation of restrictions whose severity no court would sanction." Blake 1960 *Harvard Law Review*

Do we want doctors and vets to feel terrorized in professions that already strain providers mental health?

Does this in terrorem effect really lead to the best quality patient care?

PLEASE SUPPORT HB 1388 / SB 1182

PATIENTS AND PROVIDERS OVER PROFITS

THANK YOU

HB 1388_MDCC_Labor and Employment – Noncompete and
Uploaded by: Hannah Allen
Position: UNF

MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
Unfavorable
House Bill 1388
Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals
Senate Finance Committee

Thursday, March 28, 2024

Dear Chairwoman Beidle and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic growth and prosperity for Maryland businesses, employees, and families.

HB 1388 would eliminate the use of noncompete agreements for the healthcare and veterinary industries. Noncompete agreements are an important tool used for staff recruitment and they are critical to fostering innovation and preserving competition. A ban on noncompete agreements would likely create fewer workforce opportunities and reduce investment in employee education, training, and development. Additionally, noncompete agreements protect trade secrets and client lists from being used against an employer to unfairly advance the interests of a competitor.

Banning noncompete agreements in the veterinary and health care professions would have a negative impact on the talent and/or compensation strategy of those industries. Employers would likely reduce the sharing of sensitive information with employees and/or reduce or defer compensation as a result. Businesses consistently cite recruiting and retaining properly skilled talent as their biggest priorities. A recent report from the U.S. Chamber of Commerce confirms what we already know to be true: Maryland's businesses face a hiring crisis. With only 33 available workers for every 100 open jobs, our labor market is ranked as one of the worst in the country. HB 1388 would make retaining top talent more difficult in an already challenging market.

Moreover, the Chamber is concerned that HB 1388 will serve as the cornerstone for future widespread noncompete ban initiatives. HB 1388 is too simplistic, as it is a blanket ban on the use of noncompete agreements for two entire industries. In other states where there are limitations on the use of noncompete agreements, exceptions are built into statute for certain circumstances – two examples include California and Delaware. HB 1388 includes no such exemptions.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on **House Bill 1338**.

HOUSE BILL 1388 (2).pdf
Uploaded by: Judy Tubman
Position: UNF

HOUSE BILL 1388 / SENATE BILL 1182

As a doctor of Veterinary Medicine for 37 years and the owner of my own practice since 1990, I am opposed to HB 1388/SB1182.

I am certain that every professional, no matter what their field of expertise, has had the misfortune of knowing a colleague that sheds an unfavorable light on their profession. This becomes a real problem when one is unfortunate enough to hire that person. Imagine hiring an associate that is malice, slanders you & your practice or attempts to steal your clients and you are forced to terminate their employment. This problem is compounded when the employer is unable to protect their clients, their practice, their reputation & their livelihood that they have worked so extremely hard to cultivate. If one does not have a non-compete agreement you will be forced to spend thousands of dollars in legal fees & possibly lose the entire practice.

So many large animal practices are single person practices that bring associates in under their wing, with the hope that those associates will stay on and become partners in their practice. These practices take decades to build & grow. These practices are often what the owner is relying upon for their retirement. If you do not have a non-compete these practices will cease to exist resulting in a very large void in available Veterinarians.

The current non-compete contract can be designed to suit both the employer & employee & therefore should remain a tool that can be used if needed. It should be left in place as an option that can be used. This bill would leave small practice owners i.e. solo practitioners, no option to grow their practices.

Finally this bill has been rapidly pushed through this legislative session. This bill should be for the members of the Veterinary & the Medical community to discuss & vote on before any legislation is considered or passed.

Therefore, I am opposed to the removal of this very important non-compete option in employment contracts.

Thank you for your consideration,
Dr. Judy Tubman

HB 1388 - Labor and Employment - Noncompete and Co
Uploaded by: Kerry Richard
Position: UNF

MedStar Health

10980 Grantchester Way, 6th Floor
Columbia, MD 21044
P 703-408-1987
MedStarHealth.org

Legal Department

Kerry M. Richard
Senior Vice President &
Executive Deputy General Counsel

HB 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals
Senate Finance Committee
Position: ***Oppose***

March 28, 2024

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

Dear Chair Beidle:

I am Kerry Richard, MedStar Health's Senior Vice President and Executive Deputy General Counsel. More importantly, I have been a labor and employment lawyer representing healthcare and veterinary employers in Maryland for 30 years.

MedStar Health is one of the largest non-profit health systems in Maryland, with 32,000 employees, 10 hospitals and over 700 access points for care, covering 225 zip codes in 17 counties. We employ over 2600 physicians.

MedStar's mission is to provide care to patients across our communities, and to do that we have made and are making substantial investments in recruiting and retaining top quality physicians and deploying them across the region.

To support this strategy, MedStar has asked every physician to sign a restrictive covenant that prevents them from competing within 5 miles of their primary MedStar work location for a period of 2 years after resigning from MedStar or being fired "for cause." For certain specialties, the radius is expanded up to 15 miles.

The restriction does not apply if MedStar terminates the physician's employment "without cause" and it does not apply to physicians working in Emergency Departments, regardless of location. The restriction also expressly invites physicians to request a waiver of any restriction at the time of resignation to allow the provider to work in the restricted area, if the physician's new work does not compete unfairly with MedStar.

I share all this with you to explain that MedStar's purpose is not draconian – and absolutely not intended to run physicians out of Maryland. It is intended solely to protect MedStar's ability to develop and maintain good will in the communities we serve – something courts in Maryland have recognized as a legitimate protectible interest since the 1960s.

Why do health care employers need this restriction? Because for every new physician we hire, we make a start-up investment of between $500,000 and $1 million. That includes office space, equipment, staff, and medical malpractice coverage, as examples. In addition to the start-up investment, MedStar pays full-time

new hire physicians a base annual compensation upwards of $250,000, plus a full array of benefits. We provide this income during their start-up period, to support them even though studies indicate that it takes 24 months for most physicians to achieve median levels of productivity. These are long-term investments.

MedStar has continued to expand its physician workforce annually. In 2023, it grew by more than 100 physicians compared to 2022. MedStar makes these investments in every physician, so that MedStar can continue to meet its commitments to provide access to patients in their own communities.

If every physician were free to leave and compete in the immediate vicinity of their MedStar office, those investments would make no sense. The restriction allows MedStar a reasonable period of time to recruit and replace the departing physician, to introduce patients to the new physician and to re-cement patients' good will with MedStar.

More importantly, if hospitals and health systems cannot make and reasonably protect these investments, they will not be able to continue making them. This will limit access to care and leave the burden on rural and disadvantaged communities to attract and retain physicians in those communities.

As many of the "proponents" of this bill have pointed out, young physicians coming out medical school simply do not have the economic means to start up their own practices. The debt load, and the significant costs of operating a medical practice are the true reasons why physicians are seeking to be employed by larger health systems. And Maryland's non-profit health systems are stepping into the breach, dedicating their scarce resources to seed these physician's practices because we know that access to care is essential to safeguarding the health of our communities and managing the total cost of care. But health systems are not banks. We are charged with managing the total cost of care in Maryland, and if we cannot fairly protect our investments, we will not be able to continue to support physician practices across the state.

A few other points:

1. The health care market place is already significantly disrupted by non-traditional players who want to leverage for-profit models of care, cherry-picking high value services leaving non-profit health systems to care for the masses, the underinsured, the disadvantaged, and to fight for reimbursement. The margins for non-profit health care are simply too thin to make it even harder to expand access to care.
2. As the daughter of a veterinarian, and a life-long horse owner, there is literally zero equivalency between the business of equine veterinary medicine and the legal, moral, and ethical need to provide access to healthcare for all the people in our communities. The unique mission of Maryland's non-profit health systems and the challenges they face in providing affordable access to care is too important and too complex to be coupled with a discussion about for-profit, fee-for-service veterinary care supporting a predominantly recreational activity.

For all of these reasons, we oppose HB 1388. Thank you for your consideration.

Sincerely yours,

Kerry M. Richard

cc: Members, Senate Finance Committee
David A. Smulski, Staff

UPMC WMD_Ending Non_Competes_Senate_032724 version
Uploaded by: Michele Martz
Position: UNF

UPMC | WESTERN MARYLAND

HB 1388 / SB 1182 - Labor and Employment – Noncompete and Conflict of Interest (COI) Clauses – Veterinary and Health Care Professionals

On behalf of the Maryland Hospital Association's (MHA) and UPMC Western Maryland, we appreciate the opportunity to comment on House Bill 1388. Like MHA and many of its members, we are concerned about the detrimental impact banning noncompete agreements will have on the hospital workforce, hospitals, and Marylanders – particularly those living in rural and underserved areas.

Executive Summary: Ending Noncompete and COI clauses exacerbate problems of health care labor scarcity, especially for medically underserved areas like rural communities.

Banning non-compete agreements would jeopardize access to care.

- Competition for physicians—especially in high-demand specialties—is already high and is increasing. Non-compete agreements help ensure that hospitals can continue to safely provide care to their communities without interruption.
- Significant time and resources go into recruiting and onboarding skilled health care practitioners and rural hospitals cannot always quickly find and hire new staff to fill vacancies.
- Particularly in rural and underserved communities served by UPMC Western Maryland, there may be very few physicians practicing a particular specialty. **Keeping those providers is vital to maintaining access to care.** UPMC Western Maryland invests significant resources in recruiting, and in capital expenditures to build the programs. If physicians are "cherry-picked" and we cannot recruit a replacement, the hospital could not only loose both the specialty service, but also investments made.

Hospitals need to protect investments in skilled physicians.

- Non-compete agreements protect hospitals that incur significant up-front costs for onboarding new physicians, such as securing liability coverage and credentialing with insurers.
- This is particularly important in rural and other medically underserved areas like Western Maryland.
    - This shortage will only worsen in the coming years because the rural physician population is disproportionately older. [1]
    - Shortages among one profession or specialty have a domino effect on others, with serve adverse consequences for rural hospitals. [2]
    -

For example, lack of access to a general surgeon as backup could severely limit the availability of other hospital services such as trauma care, cardiology, and oncology treatments. For example, the following are neighboring trauma centers and the shortest distance by ground from UPMC Western Maryland:

- Winchester Medical Center (Level 2) – Winchester, VA – 60 miles
- Conemaugh Memorial Medical Center (Level 1) – Johnstown, PA – 65 miles
- UPMC Altoona (Level 2) – Altoona, PA – 70 miles
- Meritus Medical Center (Level 3) – Hagerstown, MD – 70 miles
- WVU Ruby Memorial (Level 1) – Morgantown, WV – 75 miles

Moreover, our facility is the only hospital in Maryland west of Baltimore that provides cardiac surgery. The nearest hospital that provides services like the TAVR treatment is 60 miles away and across state lines in West Virginia. Our Schwab Cancer Center is the only radiation oncology within 60 miles between Hagerstown, MD and Morgantown, WV.

On behalf of the patients and employees at UPMC Western Maryland, we appreciate your consideration of our serious concerns around HB 1388 / SB 1182.

Respectfully submitted,

Michele R. Martz, CPA, FACHE
President
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[1] See Lucy Skinner, et al., Implications of an Aging Rural Physician Workforce, N Engl J Med 2019; 381:299-301.
[2] Council on Graduate Medical Education, Strengthening the Rural Health Workforce to Improve Health Outcomes in Rural Communities (Apr. 2022), at https://www.hrsa.gov/sites/default/files/hrsa/advisorycommittees/graduate-medical-edu/reports/cogme-april-2022-report.pdf.

Crossover Testimony_HB 1388- Labor and Employment

Uploaded by: Pegeen Towsend

Position: UNF

Maryland
Hospital Association

House Bill 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Position: *Oppose*
March 28, 2024
Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to comment on House Bill 1388. MHA is concerned about the detrimental impact banning noncompete agreements will have on the hospital workforce, hospitals, and Marylanders.

Noncompete agreements (NCA) are conditions to an employment contract that prohibit an employee from working for a similar company usually within a certain geographic region and for a set time. On average, NCAs last anywhere from two to three years and are as short as six months for health care professionals including physicians. These agreements create necessary assurances for hospitals and their clinicians. They help protect intellectual property, trade secrets, and competitive advantages.

For hospitals, NCAs ensure patients will receive care from the same providers in the same health care setting for a set period. Provider-to-patient relationships are necessary to build healthy communities and improve health outcomes for patients. Often, marginalized communities are less likely to receive health care because of provider distrust, and NCAs can help create consistency and strengthen provider relationships.

Maryland hospitals continue to struggle with adequate staffing. Hospitals have innovative initiatives to yield better health outcomes. At times, these programs require months of training and, in some instances, years to see results. NCAs reduce the risk of employees leaving work for competitors and allow hospitals to develop and grow existing talent.

MHA supports advancing career opportunities for health care workers. However, we believe contractual guardrails should be in place so that hospitals have sufficient experienced staff who can administer care to Marylanders. Furthermore, a revolving door of clinicians does not best serve hospital operations nor patient care.

For these reasons, we request an ***unfavorable*** report on HB 1388.

For more information, please contact:
Pegeen Townsend, Consultant

HB1388_20240327_142549_003132.pdf
Uploaded by: Rachel Blakey
Position: UNF

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Rachel Blakey, VMD

MARYLAND EQUINE CENTER, Inc.

13401 Longnecker Road
Reisterstown, MD 21136

March 25, 2024

Dear Sirs,

I want to register my opposition to SB1182. / HB1388

I am writing to explain my opposition to this bill that removes non-compete parameters from employee contracts.

I am a 1986 graduate and own an equine exclusive ambulatory practice in Maryland. I have hired eight different associates, so I am familiar with non-compete dynamics.

If an associate is brought into a veterinary practice and that associate is properly mentored, nurtured, and promoted by the practice, the associate benefits from this promotion above and beyond what would have happened without the promotion from the employer. The employer endorsement gives the employee veterinarian an unfair advantage to compete with other veterinarians and their former employer because of that endorsement.

Associate veterinarians without a non-compete employment contract who plan to leave their position may be incentivized to speak negatively about their practice and other employees, and maybe incentivized to act in a manner not consistent with practice policy. This can be harmful to the employer, other practice employees, clients and patients.

Practice owners, such as myself, struggle to find and to keep quality associates. An associate who has left a practice and stays within the local market and who poach clientele make it difficult, if not impossible, to want to afford to hire another associate. The lack of collegial atmosphere within the local market is equally harmful to all involved.

A non-compete clause within an employee contract should be reasonable in its scope and restrictions. When properly executed and properly explained to the employee, everyone benefits.

Bill 1388 is too broad and overreaching in its scope. The bill lacks definition. Its retroactive application is not well thought out. The veterinary community has not had an opportunity to review or to consider this important and impactful legislation and indeed, veterinarians should be consulted and surveyed before this bill is put forward. I am opposed.

Sincerely,

Rachel Blakey, VMD, MPH, DACVPM
Maryland Equine Center, Inc.