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New Florida Law Affects the Enforcement of Physician Non-Compete Agreements

In Florida, non-compete agreements are governed by Chapter 542, Florida Statutes, and are generally enforceable as long as the geographical and time restrictions are reasonable in scope. However, on June 25, Governor Ron DeSantis signed into law a new provision dramatically limiting the enforcement of such agreements against physicians who practice in rural counties and focus their practice on a medical specialty.

Non-Competes in the Medical Profession

Florida's public policy allows enforcement of non-compete agreements, which has had a significant impact on the medical profession. As physicians have become increasingly mobile, it has become commonplace for entities that hire physicians to include restrictive covenants in employment agreements as a tool to deter the physicians from leaving to open a competing medical practice within a geographic region for a set period of time. These covenants also surface in partnership agreements and contracts for the sale of medical practices.

Florida Statutes Section 542.335 governs non-compete agreements and sets forth several factors that determine enforceability of a non-compete. Normally, restrictive covenants are permitted to protect "legitimate business interests." In order for a restraint to be deemed lawful, employers must be able to demonstrate that the restrictive covenant is "reasonably necessary to protect the legitimate business interest." Physician employers typically satisfy this requirement rather easily by demonstrating their investment in physician salaries, a steady flow of patients, and access to office space, facilities, and equipment.

Florida statutes do not include any specific geographical limits. Rather, if a court finds a challenged non-compete provision to be "overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interests," it can modify or "blue pencil" the agreement to cure the issues affecting enforceability. Florida appellate courts have routinely reduced geographical or time restrictions deemed to be overbroad. Courts can also deem a restrictive covenant unenforceable if public policy significantly outweighs the legitimate business interests in enforcing the non-compete language.

The New Law Affects Enforcement of Non-Compete Agreements for Physician Specialists

Effective July 1, Florida law now prohibits non-compete agreements between a physician and an entity that employs or contracts with, either directly or indirectly, all physicians who practice the specialty within the same county. The new law also dictates that the restrictive covenant shall remain void and unenforceable for a three-year period following the entry of a second employer to the market that, either directly or through related or affiliated entities, employs one or more physicians who practice the same medical specialty. The statute expressly states that such restrictive covenants are void and unenforceable because they do not promote a legitimate business interest. The statute further sets forth public policy justifications to invalidate the restrictive covenants. Namely, the statute finds that such covenants do not benefit a patient, as they restrict access to physicians and increase the cost of healthcare.

The Implications Moving Forward

By amending Chapter 542, the Florida Legislature seeks to address the imbalance of power between doctors and their hospital-affiliated employers in rural areas of the state. In the past decade, in large part due to the current reimbursement climate, many physicians have sold their practices to entities affiliated with hospitals or hospital-affiliated medical groups and become employees. It is customary for physicians employed by hospitals to sign sweeping non-compete agreements, which forbid them from practicing in the same geographic area for two years after leaving the provider's employment. These non-compete provisions apply even when contracts are not renewed by the employer. The result in rural Florida counties has been a lack of competition for medical specialists and available choices for patients. The new law, however, limits efforts to curtail competition and creates options for patients.

Conclusion

This new law imposes a significant change to Florida's well-established precedent regarding non-compete agreements, but is limited to medical specialists in rural areas. Physician employers should be familiar with the new law and make adjustments to their employment agreements.

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