Fla. Invalidates Enforcement of Certain Physician Noncompetes, Signaling a Shift in Laws

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In 2019, Florida law shifted regarding physician related noncompetition agreements. The Florida legislature unanimously passed a law, that Gov. Ron DeSantis then promptly signed, that changed the legal playing field in physician-related noncompetition agreements. Basically, the statute invalidates physician noncompetes in counties where only one employer employs all the medical specialists in that county. Consistent with steps taken by many other states that have invalidated noncompetes for health care providers, Florida's decision is significant because it signals an emerging shift toward a ban on noncompetes for physicians and potentially others.

Historically, in Florida, noncompetes have been enforced so long as they had a reasonable scope in terms of geography and time, and supported a legitimate business interest. The newly enacted *Florida Statute Section 542.336* purportedly addressed the negative impacts of the emerging trends in healthcare consolidation, which some argue have led to minimized access to specialists and increased costs. The statute clarifies existing Florida law on physician-related noncompetes and nullifies those that prohibit physicians from competing with their former employer if that employer employs, or otherwise contracts with, every other physician with that specialty in that county. Those noncompetes are void and unenforceable for three years after another employer competes in that county by offering services in the same specialty.

Proponents of the new law are seemingly pleased with this outcome, saying it will help increase patient choice and access as well as lower health care costs because of increased competition. Significantly, from a consumer perspective, the law also helps minimize situations where patients are unable to access their chosen doctors simply because their doctor moved to a new employer.

Indeed, these changes represent a marked departure from more rigid thinking toward enforcement of noncompetes and an emerging shift in the direction of health care law to ban noncompetes for physicians. And, just as important, it leaves open the question: what positions will be next?

As a next step, it would not be unreasonable to imagine that similar statutory changes would eventually apply to other healthcare professionals, including nurses, nurse practitioners, physician assistants, or other mental health professionals. These changes would be in line with the American Medical Association's long-standing Code of Ethics advising doctors against signing covenants that restrict competition. Specifically, the AMA guidance provides that doctors "should not enter into covenants that: unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specified geographic area on termination of a contractual relationship; and do not make reasonable accommodation for patients' choice of physician."

There is no doubt that the modification to *Florida Statute Section 542.336* will have impactful ramifications on the health care industry as well as on the future of noncompetes in health care and other professionals that should follow. In today's highly competitive environment, and in a state that already encourages competition, further eroding of the noncompete statutes is inevitable. The only question is how and when.

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