The Impact of Indiana's Restrictions on Physician Non-Compete Agreements

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Recent Indiana legislative sessions have limited the ability of health care entities to enter non-compete agreements with physicians, and the impact of that legislation is starting to be seen.

By way of background, prior to 2020 Indiana generally regulated non-compete agreements involving physicians in the same manner as other occupations. In 2020, the General Assembly enacted specific provisions that must be included in any physician non-compete agreement originally entered into on or after July 1, 2020. The provisions include, among others, providing patients with the physician's contact information upon the physician's termination, providing the physician with access to patient medical records post-termination, and allowing any physician subject to a non-compete agreement the ability to buy out the non-compete at a "reasonable price."

Effective July 1, 2023, additional restrictions regarding physician non-competes took effect, the most significant of which are as follows:

Primary care physician non-compete agreements are unenforceable: Indiana now bans non-compete agreements with primary care physicians (PCP). Primary care physician is defined as a physician practicing in Family medicine, General pediatric medicine or Internal medicine. (Non-compete agreements with PCPs effective prior to July 1, 2023, remain valid and enforceable subject to a determination of reasonableness under Indiana law.)

Physician non-compete purchase option: Physician non-compete agreements must include a buy-out option for the physician. The statutes provide a process for negotiating the "reasonable price" of the buy-out, including a mediation process if the parties are unable to agree on a reasonable purchase price.

The circumstances of a physician's termination may render a non-compete unenforceable: Certain physician non-compete agreements entered after July 1, 2020, are unenforceable depending on the circumstances of the physician's departure from their employment:

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- Employer terminates the physician's unemployment without cause;
- Physician terminates the physician's employment for cause; or
- Physician's employment contract has expired and the physician and employer have fulfilled their respective obligations of the contract.

Neither "without cause" or "for cause" are defined in the statute, leaving room for physicians to dispute whether their termination was "for cause" and creating the possibility that an otherwise enforceable non-compete agreement will be unenforceable.

The ban on non-competes from primary care physicians has already had a broader impact. Indianapolis' Eskenazi Medical Group has removed non-compete clauses from all physician contracts. Such a move could result in a recruiting advantage due to physicians finding the lack of a non-compete attractive. Only time will tell as to whether other employers follow suit.

Regardless of how a health care entity chooses to use non-competes with physicians, the statutory requirements discussed above must be followed in drafting non-competes. In addition, employers should explicitly outline reasons for a physician's termination to establish "cause" and decrease the risk that the physician's non-compete is deemed unenforceable.