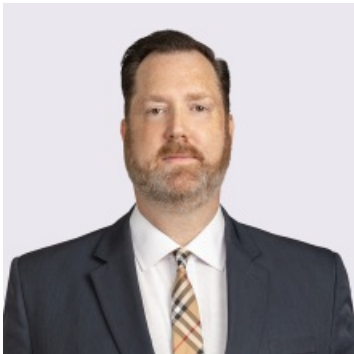


Indiana Bans Physician Non-Competes for Primary Care Physicians, Adds Restrictions for Others

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April 26, 2023

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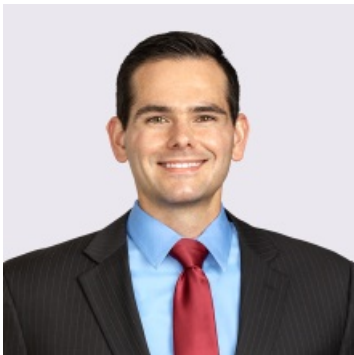


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Just three years after passing a statute significantly restricting the enforceability of physician non-compete agreements, Indiana's legislature has passed an amendment, **Senate Enrolled Act No. 7**. Senate Enrolled Act No. 7 would invalidate a significantly broader category of physician non-compete agreements on or after July 1, 2023. Governor Eric Holcomb is expected to sign the bill into law.

2020 Physician Non-Compete Statute

Until 2020, Indiana generally did not regulate non-compete restrictions entered into by physicians any differently from other occupations.

In the absence of statutory regulation, however, the Indiana Supreme Court recognized the competing public policy considerations in support of and opposed to enforcement of physician non-competes. *Cent. Ind. Podiatry, P.C. v. Krueger*, 882 N.E.2d 723, 725 (Ind. 2008). The Court acknowledged the public policy concern that completely restricting physicians from practicing within a geographic area might interfere with the physician-patient relationship and impair a patient's ability to exercise physician choice. Ultimately, however, the Court explained this was a policy question better left to the state legislature.

In 2020, the state legislature responded to that policy question by passing Pub. L. No. 93-2020 (codified in part as Ind. Code § 25-22.5-5.5). Ind. Code § 25-22.5-5.5 sets forth a laundry list of specific provisions required for any enforceable physician non-compete agreement originally entered into on or after July 1, 2020. These provisions include, for example, language about patient contact, access to patient medical records, and a requirement that any physician subject to such an agreement be permitted to exercise a purchase option releasing the physician from the non-compete agreement at a "reasonable price."

The Amendment

Three years in, many unanswered questions remain, including the scope of the term "non-compete" as used in the statute.

Some questions remain unanswered even with the passage of Senate Enrolled Act No. 7. But Senate Enrolled Act No. 7 provides some additional guidelines for negotiating the "reasonable price" of a physician's release from a non-compete restriction. The Act provides for a mandatory mediation process at the election of either the physician or employer if the parties are unable to agree. These new guidelines, however, apply only to agreements on or after July 1, 2023.

Senate Enrolled Act No. 7 provides for an outright ban for non-compete agreements entered into on or after July 1, 2023, between employers and primary care physicians. The Act defines a primary care physician as "a physician practicing in one (1) or more of

the following: (1) Family medicine. (2) General pediatric medicine. (3) Internal medicine.”

In addition, Senate Enrolled Act No. 7 would render unenforceable all physician non-compete agreements on or after July 1, 2023:

- If the employer terminates the physician’s employment without cause;
- If the physician terminates the physician’s employment for cause; or
- If the physician’s employment contract expires and the physician and employer have fulfilled their respective contractual obligations.

The Act does not define “without cause” or “for cause.”

Implications

Senate Enrolled Act No. 7 will create three separate analytical frameworks for examination of physician non-compete agreements in Indiana:

1. The first applies to physician non-compete agreements entered into prior to July 1, 2020. These agreements are enforceable so long as they are reasonable under Indiana common law. Practically, however, the passage of Pub. L. No. 93-2020 and Senate Enrolled Act No. 7 reflect the legislature’s strong views regarding the (un)reasonableness of Indiana physician non-competes. How heavily courts will incorporate the new statutes into their overall reasonableness analysis for physician non-competes remains to be seen. If otherwise enforceable and reasonable, these agreements will remain enforceable on or after July 1, 2023, as long as the employer does not terminate the physician’s employment without cause, the physician does not terminate employment for cause, and the parties have not fulfilled their respective contractual obligations under the physician’s employment contract.
2. The second applies to physician non-compete agreements entered into after July 1, 2020, but prior to July 1, 2023. Agreements from this time period *maybe* enforceable if they include the mandatory provisions included in Ind. Code § 25-22.5-5.5. But the agreements must still undergo an independent analysis as to reasonableness under Indiana common law. If otherwise enforceable and reasonable — and compliant with the requirements of Pub. L. No. 93-2020 — these agreements will remain enforceable on or after July 1, 2023, as long as the employer does not terminate the physician’s employment without cause, the physician does not terminate employment for cause, and the parties have not fulfilled their respective contractual obligations under the physician’s employment contract.
3. The third applies to physician non-compete agreements entered into on or after July 1, 2023. These agreements fall into two main categories. The first category is agreements between employers and primary care physicians. These agreements are categorically invalid. The second category includes agreements between employers and any physician who is not a primary care physician. These agreements are valid so long as they satisfy the requirements created by Pub. L. No. 93-2020. However, like agreements under the first two frameworks above, agreements in this second category become unenforceable if the employer terminates the physician without cause, the physician terminates the physician’s employment for cause, or the physician’s employment contract expires and both sides have fulfilled their obligations.

This complex web of analytic frameworks will require companies employing physicians in Indiana to adapt in a short time or risk competing at a distinct disadvantage. Given the

imminence of this new reality, these companies should immediately assess how they should update or adjust their plans for protecting patient and community goodwill and confidential information and safeguarding other protectable interests.

Contact a Jackson Lewis attorney to learn more about potential strategies or for assistance in updating plans to adjust prior to this new statute going into effect.

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