

Attorneys:

- **Randall C. Mathieson**
rmathieson@pullcom.com
203.330.2037

Effect of Public Act 16-95 on Physician Non-Compete Agreements

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Randall C. Mathieson

Effective Date: The restrictions imposed by the Act apply to any covenant not to compete “entered into, amended, extended or renewed” on or after July 1, 2016.

Observation: *No exception is made for pre-existing agreements with “evergreen” renewal provisions, so they would become subject to the Act at the next renewal date on or after July 1, 2016.*

“Covenant not to compete” defined: “any provision of an employment or other contract or agreement that creates or establishes a professional relationship with a physician and restricts the right of a physician to practice medicine in any geographic area of the state for any period of time after the termination or cessation of such partnership, employment or other professional relationship.”

Observation: *It appears that the typical restrictive covenant included in an agreement for the sale of a medical practice would not fall within this definition, provided there are no provisions in the sale agreement that would create or establish an employment, partnership or other professional relationship between the buyer and the selling physician.*

Act Establishes Three Tiers of Requirements, ALL of which Must Be Satisfied:

Tier One: The covenant not to compete cannot restrict the physician’s competitive activities (a) for a period of more than one year, and (b) in a geographic region of more than 15 miles from the primary site where such physician practices.

- The “primary site where such physician practices” means “(A) the office, facility or location where a majority of the revenue derived from such physician’s services is generated, or (B) any other office, facility or location where such physician practices and mutually agreed to by the parties and identified in the covenant not to compete.”

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Tier Two: The covenant is valid and enforceable only if it is: “ (A) Necessary to protect a legitimate business interest, (B) reasonably limited in time, geographic scope and practice restrictions as necessary to protect such business interest; and (C) otherwise consistent with the law and public policy.” Observation: *This is essentially a statutory codification of the existing common law in Connecticut.*

Tier Three: Additional Requirements:

A covenant not to compete will not be enforced against a physician where the employment contract or agreement that created or establishes the professional relationship:

- “expires and is not renewed, unless, prior to expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions.” (EXCEPTION: does not apply if “such employment contract or agreement was . . . made in anticipation of, or as part of, a partnership or ownership agreement.”)
- “is terminated by the employer, unless such employment or contractual relationship is terminated for cause.” Observation: *It appears that the Act’s use of the word “employer” above is meant to include, as well, the party contracting for a physician’s services under an independent contractor agreement, but that is not completely clear.*

Each covenant not to compete “entered into, amended or renewed” on and after July 1, 2016, shall be “separately and individually signed by the physician.” Observation: *This requirement can be met either by setting the covenant apart from the remainder of the agreement and including a separate signature line, most likely at the end of the agreement, or by use of a signed addendum. Observation: Note that the Act does not here include the word “extended” from the phrase “entered into, amended, extended or renewed” used earlier in the text. This is most likely a drafting issue that results in a distinction without a difference.*

The party seeking to enforce a covenant not to compete has the burden of proof in any proceeding.

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