



NEW JERSEY STATE BAR ASSOCIATION

November 28, 2023

Via Electronic Mail

The Honorable Herb Conaway, M.D.
Delran Professional Center
Building C, Suite 450
Route 130 North
Delran, New Jersey 08075

Re: A2003 (Conaway) – Restricts use of restrictive employment covenants for physicians and nurses

Dear Assemblywoman Conaway:

On behalf of the New Jersey State Bar Association, I share with you concerns raised regarding A2003, which addresses the use of restrictive employment covenants with licensed physicians. While the NJSBA does not take a position on the use of restrictive covenants in this setting, it raises the following concerns and asks you to reconsider this legislation.

Questions arose that indicated some of the language needs additional clarity to avoid arbitrary determinations in its application. Specifically, the concerns are as follows:

- With regard to the 30 physician threshold referenced in Section 1(b)(1), questions arose as to the significance of this number and whether this threshold was applicable to hospitals;
- If a physician joins a larger practice with more than 30 physicians, and then joins a smaller practice group of 30 or under physicians, will the restrictions implemented by the larger practice remain applicable until after termination from the small practice group and vice versa?
- The term “unique incentive” referenced within the legislation appears broad and arbitrary. If, for example, the intention is to void only restrictive covenants that prohibit a physician from practicing in a sole physician practice (apart from the specific exceptions for federally qualified health centers and physicians who are provided “unique incentives”), this should be made clear. Furthermore, key terms such as “unique incentives” should be defined so the scope of the prohibition is clear.
- Questions arose as to current restrictive covenants in place that may potentially conflict with these proposed prohibitions. For instance, would violative existing restrictive covenants be grandfathered in or would they become void and unenforceable immediately upon the effective date of this legislation?

- If the restrictive covenants are grandfathered in, how would this impact employment agreements with “evergreen” provisions in which they automatically renew?

We thank you for considering our comments. Please feel free to contact me at lchapland@njsba.com, 732-214-8510 (office) or 732-239-3356 (cell). On behalf of the NJSBA, thank you for your continued leadership.

Very truly yours,

Lisa Chapland

Lisa Chapland, Esq.

cc: Timothy F. McGoughran, Esq., NJSBA President
William H. Mergner, Jr., Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director