

# Healthcare Workplace Update

Labor and Employment Laws and Developments in Healthcare Industry

## New Connecticut Statute Restricts Physician Non-Compete Agreements

By Edward M. Richters on June 8, 2016

On June 2, 2016, Connecticut Governor Dannel Malloy signed Public Act 16-95, establishing significant new restrictions on physician non-compete agreements in Connecticut.

Under the statute, an existing physician covenant not to compete is valid and enforceable only if it is:

1. necessary to protect a legitimate business interest;
2. reasonably limited in time, geographic scope, and practice restrictions as needed to protect that interest; and
3. otherwise consistent with the law and public policy.

The statute also states that the party seeking to enforce a physician covenant not to compete bears the burden of proof at any proceeding.

While these factors and burden of proof are consistent with current Connecticut common law as to non-compete agreements in general, the remainder of the new statute is not.

For covenants not to compete that are entered into, amended, or renewed on or after July 1, 2016, the statute prohibits restricting a physician's competitive activities (i) for longer than 1 year and (ii) beyond 15 miles from the primary site where the physician practices (defined as "the office, facility or location where a majority of the revenue derived from such physician's services is generated, or 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.").

Additionally, a covenant not to compete entered into, amended, or renewed on or after July 1, 2016 must be signed by the physician and is not enforceable against a physician if (i) the employment agreement at issue was not made in anticipation of, or as part of, a partnership or ownership agreement and the agreement expires and is not renewed,

unless, prior to the expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions, or (ii) the employer terminates the employment or contractual relationship without cause.

The statute provides that if a covenant is rendered void and unenforceable under the statute, the remaining provisions of the contract remain in full force and effect, including any provisions requiring the payment of damages for injuries suffered due to the contract's termination.

Until Connecticut courts have an opportunity to interpret the 15-mile rule, new or amended physician non-compete agreements should refer to the 15-mile range, rather than listing towns that would fall within that range. If any part of a listed town falls outside of the 15-mile range, a court could find the entire restriction to be unenforceable.

Public Act 16-95 is silent as to whether courts are allowed to apply the "blue pencil rule" in determining the enforceability of post-July 2016 physician non-compete agreements. The "blue pencil rule" would normally permit a judge to strike a geographically improper town from a list, while enforcing a restriction within the remaining listed towns.

