

Dana Engle
Chief Executive Officer, Madison Health
Chair, OHA Small and Rural Hospital Committee

Opponent Testimony
Senate Bill 150
Ohio Senate Small Business and Economic Opportunity Committee
October 27, 2021

Chairman Rulli, Vice-Chair Lang, Ranking Member Sykes and members of the Senate Small Business and Economic Opportunity Committee, my name is Dana Engle and I serve as the CEO of Madison Health, located in London, Ohio. I am also the chair of the Ohio Hospital Association's Small & Rural Hospital Committee. Thank you for the opportunity to provide testimony on behalf of the Ohio Hospital Association in opposition to Senate Bill 150, which prohibits non-compete provisions in physician employment contracts.

Established in 1915, OHA is the nation's first state-level hospital association. OHA exists to collaborate with member hospitals and health systems to ensure a healthy Ohio. OHA currently represents 245 hospitals and 15 health systems throughout Ohio. The association is governed by a 20-member Board of Trustees with representation from small and large hospitals, teaching facilities and health care systems with a committee and task force structure. As mentioned above, I serve as the chair of OHA's Small & Rural Hospital Committee.

Senate Bill 150 prohibits any employer of physicians, including a hospital or health system, from requiring a current or prospective physician employee to enter into a post-employment non-compete agreement as a condition of employment. The types of agreements prohibited in the bill are very broad and include those where the employee agrees to refrain from obtaining employment in a certain geographic area, for a specific period of time, with a particular employer, or in a particular industry or specialty practice.

Ohio courts have consistently held that non-compete agreements are permitted as long as they are reasonable in terms of duration and geographic scope. OHA is opposed to the bill because it constitutes a complete ban on non-compete agreements, even those that may be reasonable in terms of scope and duration. While we agree that overly punitive non-compete clauses should be prohibited, the bill would prohibit the use of pro-competitive non-compete agreements that benefit patients, providers, hospitals, and health systems.

Non-compete clauses are used by the hospital field to better serve their communities with high quality accessible care. For example, hospitals in rural communities often struggle to recruit specialists, and it often takes a considerable investment to attract physicians to their community. Hospitals not only have to pay the physician's salary, but they must acquire office space, medical equipment, and support staff to make the practice work and create a viable service in the community. Many hospitals and health systems would be unable to invest the considerable financial and human resources needed to assure the success of a physician practice if they had no assurance those investments would provide a reasonable benefit to the community and return on the hospital's investment. Providing an underserved area with a new general or specialty physician practice, for example, would often not be feasible absent a reasonable non-compete agreement to assure continuity of care and access to those services within a community. Reasonable non-compete agreements are thus critical to improving access to care, and better integrating and coordinating care for patients. In

OHA opponent testimony - SB 150
October 27, 2021
Page 2

addition, hospitals in border-state communities would be at a significant competitive disadvantage because they would not be permitted to protect their investment with a reasonable non-compete clause, while hospitals across the state line would be able to do so.

This issue is critically important to the hospital field's ability to meet its commitments to the communities they serve. We urge the committee to reconsider this ban on non-compete agreements and allow the continued use of reasonable non-compete agreements that benefit the patients served by hospitals and health systems, as Ohio courts have recognized for years.

Thank you for your time and consideration of my comments.