S.B.150

Presentation By: Sean Stiltner, D.O.
Chairman Rulli, Ranking Member Sykes, and members of the Small Business and Economic Opportunity Committee, thank you for the opportunity to give my testimony to you today in regards to S.B. 150.

I would like to first start by telling you briefly about my background. I grew up in rural Scioto County Ohio on a dirt road in the vicinity of the Shawnee State Forest. I come from a family in which some had graduated High School and I knew of only one cousin that had gone on to college and she was a teacher. My father was someone who inspired me by his hard work but still faced many economic challenges.
Fast forward to after high school: I joined the United States Air Force and served 11 years, both active duty and reserve. I then Earned a B.S. Degree in Biology from Shawnee State University. I was then accepted to Ohio University College of Osteopathic Medicine. While in the AF Reserve, there was no room for a commissioned officer as a medical student, so I transferred to the Ohio Army National Guard into the state's Medical Command and gained my commission. There I served another 15 years, with 3 deployments to the Middle East and earning Bronze Star as an Army Flight Surgeon.
I have been equally successful in my civilian practice of medicine. I am board certified in Family Medicine and I am trained in Emergency Medicine. I have worked in both fields since my graduation. I have served my fellow Osteopathic Physicians as the President of the Ohio Osteopathic Association, and I am currently President elect of the Ohio Chapter of the American College of Osteopathic Family Physicians. **I would like to stress that I am here today representing myself and not these organizations.**

In my civilian career, I have seen the harsh results of non-compete contract clauses on individual physicians and on the communities in which they serve. You will not see lines of physicians clamoring to testify on this topic, as I am doing today. Why? Because if they did, they would likely suffer retribution from the administrators for which they work. I am independent, have never signed an

employment contract restricting me to a non-compete clause, and therefore I am able to speak for those who cannot, but wish that they could.

Many physicians in the state are working under oppressive employment contracts. They are in contracts with large organizations that represent their own business interests, and not the interests of their physician workers. They may say they are interested in their communities and the patients they serve, but do they really? If physicians are lost to a community or even an entire region due to onerous non-compete clauses, patients lose their beloved physicians and communities, many of which are underserves, lose medical care.

Physicians go to school for many years, take residencies, fellowships and often dedicate even more time in training to the practice of medicine. In this process, they typically get to the point where they have amassed so much student loan debt that they must work a heavy schedule just to begin to pay it back. Fresh out of training, they desperately need to go to work and scramble to find employment. They go to multiple interviews and then finally sign a contract. Listening to the wisdom of those doctors who trained them, they try to find a place where can put down long term roots, a place where they can picture themselves becoming part of the community and raising their own family. They go into a medical practice with the intent of taking great care of their patients and finding fulfillment in a profession that is really a calling. Unfortunately, this does not always work out the way they had planned. Sometimes, they realize that they have made a mistake in their choice of hospitals or group practices. Other times, it turns out that they are simply not seen as a good fit for their employers. When these things happen, a non-compete clause with a stiff geographic and/or time restriction will not allow them to make changes that allow them to stay in the area. Those restrictions “benefit” only the hospital or group practice that employs the doctor. They don’t want the doctor to take patients that the employers regard as their own. The physician will usually have to move far away, uprooting home and family, and the community loses a highly trained physician.

The non-compete clause is an instrument utilized by larger and even some smaller health care entities to hold a physician within their organization. You might ask, what is the harm? For some there is no harm, but for a large number of other doctors it becomes an unnecessary burden. They might sign a two-year contract initially, and then when time for renewal if they want to move on or negotiate for a better contract, they have no bargaining power. If they choose to leave, they must go an arbitrary distance (determined by each individual employer) from the organization with whom they are currently hired. Having already bought a home,

established children in schools and put down other roots in the community. Or, if the employer decides they can't see eye to eye with that physician, they simply refuse to renew and the doctor cannot move across the street, to a nearby locale, or quite often to any location within many contiguous counties. Non-compete clause distances can be 70 miles or more! So you still ask well, what's the harm if a doctor has to change geographic location?

I am sure that you are all aware that there is a Health Care crisis in our Country. I know you are aware because organizations I am affiliated with make you aware. You also see it on the news. The poor citizens of this state struggle with access to care. Their communities with health care have been altered to include Advanced Practicing Providers (APPs) as opposed to Physicians. The harm comes in that the APPs do not have the same knowledge base or experience as physicians. This has been presented in multiple hearings. So why not just get more physicians to come to the area? Great question. This is usually controlled by the larger health care organizations, and let's face it I can get 2-3 APPs for the price of a Physician. Does that provide quality care? I would point you to your own studies and guidance from the Robert Wood Johnson County Health Rankings. The poorest counties for overall health rankings and health outcomes will have the fewest physicians and will usually have more APPs. My county of Pike ranks 87th out of the 88 Ohio counties, and Scioto County where I grew up and trained is 88th out of 88. There are many arguments in the data that you will clearly see. There are many more that are not so obvious.

Other factors that you won't see in this data are productivity and satisfaction of physicians. I would point you in the Direction of The Dean of the Ohio University College of Osteopathic Medicine. Dr. Ken Johnson. Look at his studies about workforce development and physician satisfaction. Physicians in the state of Ohio that are licensed to practice and choose not to do so, are eye opening. There are large efforts on behalf of the college to implement instruction for students about work life balance and stress management. I would stretch just a little further and suggest that one major stress for many physicians is knowing that they are stuck in a situation (a RUT) and cannot get out. The non-complete does not allow them the freedom to negotiate for their own benefit or to branch out within their own communities. The larger and more powerful organizations with attorneys on their payroll can easily steamroll and bully the physicians. Since it is against the law for physicians to collaborate due to antitrust, they have no bargaining power, and simply have to put up with their situation or move far away.

Some employers, such as Federally Qualified Health Care Centers, have difficulty competing for physician talent because of these non-compete clauses. I worked as a Chief Medical Officer for an FQHC and one of my biggest challenges was recruiting physicians. I had many physicians ask if they could work for my organization, I would get very excited that they would want to come on board and then they would say, “One problem I have this non-compete, can you help me with this issue?” My answer would be “no”. It would be too costly to try to get them out of a non-compete. They would clearly state that they were not happy in their current situation and wanted to work in your practice, which is not far from their present employer, but they would be barred from doing so by their existing non-compete.

The larger organizations will state that they are protecting their community, patients and organizational privileged information. I would strongly argue that the opposite is true. I believe, since I have never signed a non-compete in my career, I have never brought any harm to an organization. I would also argue that because I never had a non-compete contract, I have always had the ability to refer patients to physicians that I see as most appropriate, not those on a hospital approved list, and was therefore able to provide better, more individualized care for my patient. As their doctor, I was able to do for them what I knew to be best, and not what I was forced to do by my employer. I could easily keep a patient under the umbrella of my employer, or I could refer them to out a doctor in another system, based solely on what I thought was best for my patient.

You have to wonder why a hospital or large group practice feels that it needs a non-compete arrangement to keep its physicians “in line”. Why would the organization not have its focus on providing a good work environment for the recruiting and retention of physicians, and why wouldn’t the primary goal be what is best for the area’s patients rather than what is arguably best for its own business interests and administrative leverage? Any community, but especially those that are medically underserved, would clearly prefer that hospitals incentivize providers to come and stay with better work/life balance. This is easily done through basic respect for this highly trained individual and by treating them fairly in business practices. When I was a chief medical officer in an organization, I was able to recruit providers by being able to assure them that their contract would NOT contain a non-compete clause. That was a win/win/win--for my organization, for the community, and for the doctor.

So, in closing, I would like to say that it is my opinion that the non-compete is an oppressive tool that is used to bully physicians in a crude and one-sided business

relationship where all of the negotiating power has slipped to the hospitals or large group practices. I see no evidence that non-compete arrangements improve physician morale, ease physician burnout, help the financial well-being of organizations, or improve patient outcomes or the overall health of the public. In fact, non-competes do just the opposite.
Thank you for your valuable time and I would be happy to answer any questions you may have.

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