Ohio Senate Small Business and Economic Opportunity Committee
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By

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Chairman Rulli, Vice Chair Lang, Ranking Member Sykes, and Members of the Small Business and Economic Opportunity Committee, my name is Dr. Joshua Goldberg and I am a Columbus-based neonatologist. Thank you for the opportunity to provide these comments on behalf of our Ohio-based clinical professionals, specifically our affiliated physicians.

I am here today to testify in opposition to Senate Bill 150.

First, let me introduce my specialty. I am a Neonatologist, and I am employed by Pediatrix Medical Group of Ohio, Corp. I will refer to this medical group as Pediatrix in my remarks.

Neonatologists are board certified pediatricians who have significant additional education and training and board certification in the care and treatment of premature and critically ill newborns who are admitted to the Neonatal Intensive Care Unit (NICU) within hospitals. While our affiliated Ohio medical practices have contracts with Ohio hospitals, our clinical professionals are not employed by the hospitals that we serve. Pediatrix, and it affiliates, are independent legal entities.

My practice is in Columbus. My practice provides clinical services at five hospitals. However, across the state of Ohio, our affiliated clinical professionals provide care to newborns at twenty-three hospitals. In 2020, our affiliated clinical professionals provided clinical care for nearly 38,000 newborns in Ohio, of which 4,600 were premature and/or critically ill newborns.

In addition to neonatology services, our affiliated clinical professionals provide numerous other pediatric sub-specialty services, such as pediatric cardiology, pediatric ENT, and pediatric surgery. Additionally, we provide maternal-fetal medicine services. Our physicians and advanced practitioners are reshaping the delivery of care within their specialties and sub-specialties, using evidence-based tools, continuous quality initiatives and clinical research to enhance patient outcomes and provide high-quality, cost-effective care to the most vulnerable and high-risk citizens of the state of Ohio.

Now let me turn my remarks to the current version of SB 150. If enacted as drafted, SB 150 would be one of the most sweeping and restrictive physician non-compete laws in the country. This bill precludes any non-compete for a physician during the post-employment period. There are no reasonable post-employment geographical or time-based parameters. There are no specialty-specific parameters. Further, this bill seeks to invalidate any pre-existing and contractually agreed upon non-competes in current physician employment agreements. There is no grandfathering provision. Further, this bill makes no distinction between a non-compete in an employment agreement for a physician who joins an existing practice and a physician group that is acquired by

another group. Additionally, any challenges to the bill and non-competes are through a civil action in court. Notably, many employment agreements provide for arbitration as a means to challenge a provision in an employment agreement. This bill would further invalidate those pre-existing and contractually agreed upon arbitration provisions.

All of these sweeping restrictions will certainly diminish some of the incentives associated with physicians creating and developing sustainable independent practices in Ohio.

Let me turn to the benefits of non-competes. Non-competes in health care are essential for several reasons. Medical practices make significant administrative, educational and financial investments in their employed physicians. These legitimate business interests are protected through non-competition provisions. Non-competes preclude a physician from becoming more marketable through a practice's significant investment in them, only to leave the practice and immediately open their own competing practice next door. Non-competition provisions ensure that practices do not make long term strategic financial investments that can then be disrupted by a physician who departs to compete directly with their employer. Often a departing physician will use his/her standing within a hospital and institutional knowledge of their employer's business to undermine his or her employer's practice, thus unfairly impacting competition in the market and potentially destabilizing long-standing physician practices and long-standing care delivery models within hospitals. Non-competes are essential to protect the integrity of the existing practice.

As to the purchasing of a physician practice, for example when a physician retires, such acquisition documents frequently include non-compete provisions. Part of the consideration paid for a practice by the buyer to the seller is for the stability and certainty of the workforce, and the continuity of the patient population that physician non-compete agreements bring to the transaction.

Precluding non-compete agreements for physicians will have the chilling effect of significantly undermining physicians' investments in their own practices, and may alter the calculus as health systems, hospitals, private companies, and private practices contemplate the viability of the practice of medicine in Ohio.

Thank you for the opportunity to appear before you today. This concludes my formal, written testimony and I would be happy to answer any questions.