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Testimony on Senate Bill 351
An Act Concerning Matters Affecting Physicians and Hospitals
Public Health Committee
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Senator Gerratana, Representative Ritter and members of the Public Health Committee, on behalf of the physicians and physicians in training of the Connecticut State Medical Society (CSMS), thank you for the opportunity to present this testimony on Raised Bill SB 351, “An Act Concerning Matters Affecting Physicians and Hospitals.” This bill has two distinct areas of concern for Connecticut physicians: the non-compete clause and the corporate practice of medicine.

Speaking first to the non-compete clause, CSMS represents many types of physicians, including physicians in solo and small practice groups, large practice groups and those employed by hospitals and hospital systems. As such, we recognize the difficulties faced by all physicians and understand the potentially divisive nature of this issue.

The non-compete clause has a long history in physician employment contracts and, outside of compensation, historically is one of the most negotiated and hotly contested clauses within the employment contract.

CSMS appreciates the intent behind this legislation to provide certain protections for physicians when it comes to the non-compete clause. However, we feel at this time it is imperative for us to work collectively to ensure that appropriate legislation is crafted to avoid the potential of unintended consequences.

Non-compete clauses currently come in many shapes and sizes; there is not a “one-size-fits-all” approach to the non-compete clause. One concern with this legislation is that it would establish fixed standards for the non-compete clause that may not be applicable to many physician employment situations. Many physicians have non-compete clauses that are less than two years in time. For example, 18 months is quite common in non-compete agreements. By legislating a ceiling of two years, we fear this would establish a new standard for non-compete clauses, essentially giving legislative permission to extend the length of many new non-compete clauses. Similar concerns exist for the mileage distance restriction contained in the legislation. There are circumstances where a non-compete should contain a distance restriction of no more than 10 miles and conversely circumstances exist where a non-compete upwards of 20 miles is warranted.

The Connecticut courts have recognized time and time again that there is no one-size-fits-all approach for the non-compete clause. Courts have declined to set fixed, quantitative standards for the non-compete clause and instead have established a “reasonableness” test that takes into account the facts and circumstances of each individual non-compete.

CSMS recognizes and appreciates the complexity involved in this issue. We further appreciate efforts to enact policies that allow physicians to determine, where and how they want to practice. However, we do not feel it is the time to set hard and fast legislative standards around the non-compete clause. We believe

that further discussion and study from all stakeholders to discuss and appreciate the complexity of this issue is necessary. We would welcome being a part of that discussion.

Similar to many issues involving physicians, we believe that this is another area that is ripe for alternative dispute resolution and would welcome introduction of the concept of a legislatively-established arbitration panel to settle disagreements regarding non-compete clauses.

As for the issue of the corporate practice of medicine, CSMS has strongly supported a prohibition on the corporate practice of medicine for the past ten years and our views on this subject have not changed in 2016, even withstanding the profound changes that have occurred in health care during that time period.

Simply put, the board room does not belong in the examining room where the bond of trust between a patient and his or her physician is paramount. However, the way the language in this bill is drafted leaves enormous room for doubt that this relationship will be preserved. It appears that the exceptions contained are quite broad and would in fact grant permission in many if not most circumstances for the corporate practice of medicine to exist. Certainly, it would be all but impossible to verify on quick inspection, driving many if not all such disputes to expensive and time consuming litigation. We would like to work with this Committee to understand the intent and scope of the exception proposed and to make sure that any unintended consequences related to passage of the legislation do not disturb the foundation of the patient-physician relationship.

We look forward to working with this Committee on further study and exploration of these topics.