

Preparing for Indiana's Physician Noncompete Ban Under SEA 475

Tuesday, May 20, 2025 | 1:00 PM

Presenters



Jon Bumgarner
Attorney
Indianapolis
jbumgarner@hallrender.com



Kevin Stella
Attorney
Indianapolis
kstella@hallrender.com



Dana Stutzman
Attorney
Indianapolis
dstutzman@hallrender.com

Agenda

- General History & Background
- Evolution of IN Statutes on Physician Noncompetes
- The Requirements of SEA 475
- Practical Recommendations





General History & Background

Background - Restrictive Covenants

- Most common types:
 - Non-compete ("CNC")
 - Non-solicitation (patients, referral sources, employees)
 - Nondisclosure (proprietary/confidential information)
- Generally enforceable **if**:
 - Legitimate protectable interest
 - Reasonable in scope
- Generally **not** enforceable if only purpose is to:
 - Prohibit competition
 - Deter employee from leaving

Recent Federal Activity Regulating CNCs

- FTC Final Rule (2024)
 - Would have been total ban on all non-competes with retroactive enforceability—at least in for profit sector
 - **Status:** Rule held unlawful and set aside nationwide on Aug 20, 2024 by federal judge
- Two NLRB General Counsel Memos (2024)
 - CNCs chill employees from exercising rights under Section 7 of NLRA
 - “Stay or pay” provisions treated like CNC
 - **Status:** Both Memos rescinded on Feb 14, 2025

State Legislation Limiting Use of CNCs

- Total bans (or near total): CA, MN, ND, OK
 - OH bipartisan proposed similar legislation earlier this year
 - ME and RI passed similar laws that were vetoed
- Recent CNC laws specifically targeting health care industry
 - MD law makes CNCs not available for health care professionals earning \$350k or less
 - LA law only permits physician CNCs for first handful of years
 - PA law limits CNCs for health care practitioners to 1 year or less
- Already have health care specific CNC law
 - CO, CT, DE, DC, FL, **IN**, IA, KY, MA, MT, NH, NJ, NM, PA, RI, SD, TN, TX, WV

CNCs in Indiana

- Until 2020, applicable standards set by judges/case law
- CNCs are recognized in sale of business context or if ancillary to employment relationship
- These **protectable interests** are routinely recognized by Indiana courts:
 - Relationships established during employment (patients, referral sources, employees)
 - Access to proprietary information that would give competitors an unfair advantage
 - Specialized training/investment in physician's practice

CNCs in Indiana

- Scope of restrictions (time/geography/activity) must be reasonable—limited to that what is necessary to protect the applicable protectable interest
- Non-solicitation provisions are enforceable but:
 - Limited to **current** patients
 - Limited to **certain** current employees
- Indiana courts won't rewrite overly broad provisions to make them enforceable but may "blue pencil" them



Evolution of Indiana Statutes on Physician Noncompetes

Evolution of IN Physician Noncompete Statutes

- HEA 1004, eff. July 1, 2020
 - Added new **chapter** to I.C. [§ 25-22.5-**5.5** et seq.]
- Ch. 5.5** = "Physician Noncompete Agreements"
- Sec. 1 - "**This chapter applies to physician noncompete agreements originally entered into on or after July 1, 2020.**"
 - Sec. 2 – must include patient notification protocols
 - **Sec. 4 – buyout option**

Evolution of IN Physician Noncompete Statutes

- **SEA 7, eff. July 1, 2023**
- Added/amended **sections** to I.C. 25-22.5-5.5 et seq.
 - Ch. 5.5 = physician noncompete originally entered into on or after July 1, 2020
- Sec. 1.5 defines PCPs
- Sec. 2.5 prohibits CNC with PCP in new Ks originally entered into July 1, 2023, or after
- Sec. 2(b) - enforcement prohibitions on CNCs "beginning July 1, 2023" [*Questionable validity*].
- Sec. 2.6 - convoluted buyout, notice and mediation details

Evolution of IN Physician Noncompete Statutes

- SEA 475, eff. July 1, 2025
- Added **sections** to I.C. 25-22.5-5.5 et seq.
- All three "statutes" to be read together
- Core Provision—


SECTION 7. IC 25-22.5-5.5-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: **Sec. 2.3. (a) This section does not apply to a noncompete agreement originally entered into before July 1, 2025.**

(b) Notwithstanding any other law, a physician and:

- (1) a hospital;**
- (2) a parent company of a hospital;**
- (3) an affiliated manager of a hospital; or**
- (4) a hospital system;**

may not enter into a noncompete agreement on or after July 1, 2025.

(c) Any agreement in violation of this section is void and unenforceable.

The background of the slide is a blurred photograph of a workspace. On the left, a laptop is open on a wooden desk. Next to it is a white mug. In the foreground, there are some papers and a pen. The right side of the slide is a solid white area.

The Requirements of SEA 475

Requirements of SEA 475

- **New** noncompete agreements (i.e., "originally entered into" on/after July 1, 2025) between physicians and covered health care entities are **banned**

Requirements of SEA 475

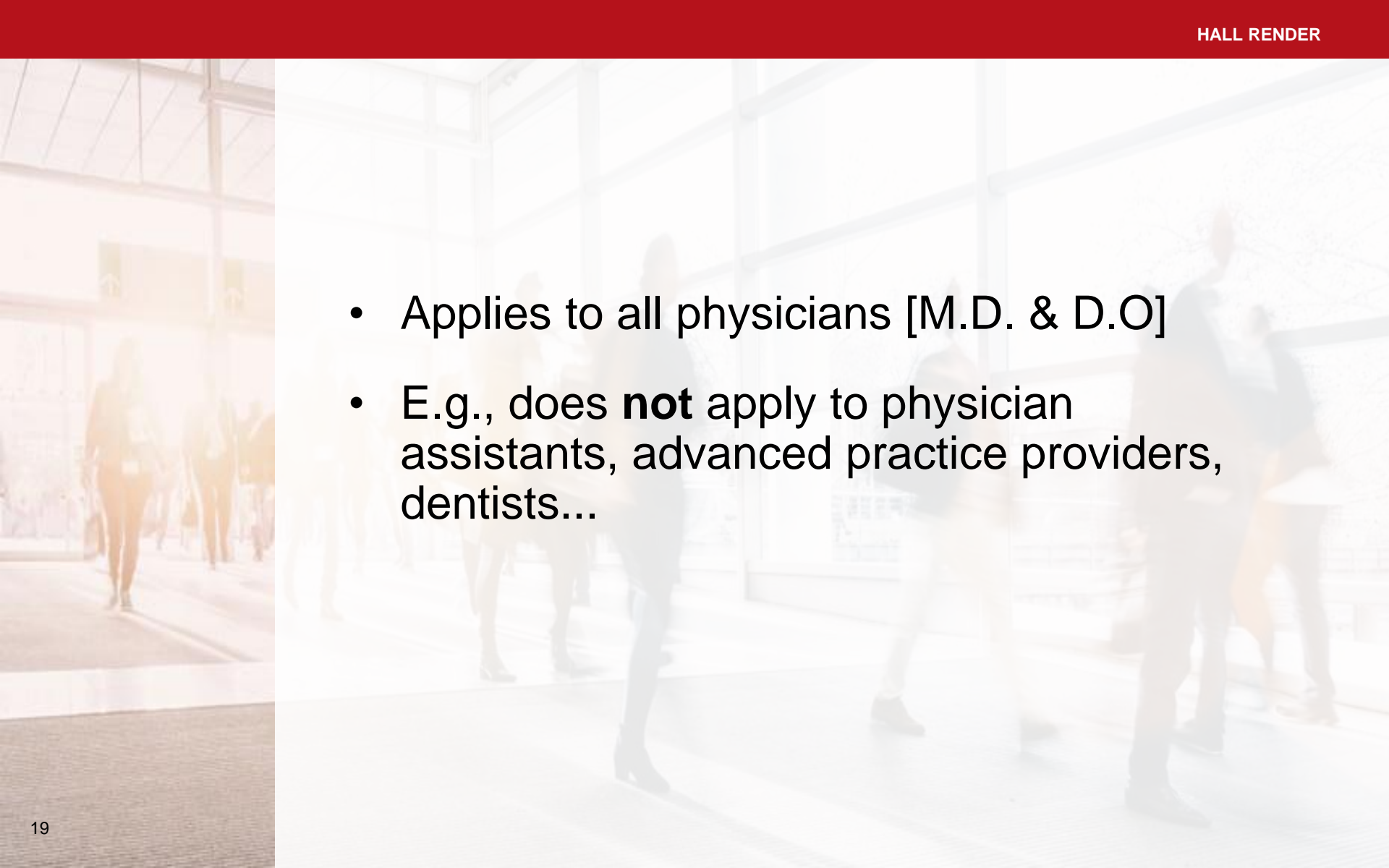
- Covered entities?
- Hospital
 - def. I.C. 16-18-2-179(b)
- Parent company of hospital
- Affiliated manager of hospital
- Hospital system

Requirements of SEA 475

- **Hospital system:** (i) a parent corporation of at least one hospital and any entity affiliated with the parent corporation through **ownership, governance or membership**; or (ii) a hospital and any affiliated entity with the hospital through **ownership, governance or membership**

Pro Tip

- For you PPGs, check your level of affiliation—if any—with the hospital?
 - Through ownership?
 - Through governance? (BOD seats, HR policies, etc.)
 - Through membership?

- 
- Applies to all physicians [M.D. & D.O]
 - E.g., does **not** apply to physician assistants, advanced practice providers, dentists...

"Noncompete Agreement" Definition

"[N]oncompete agreement means a contract, or any part of a contract, to which a physician is a party that has the purpose or effect of restricting or penalizing a physician's ability to engage in the practice of medicine in any geographic area, for any period of time, after the physician's employment relationship with a hospital, a parent company of a hospital, an affiliated manager of a hospital, or a hospital system has ended."

Breaking it down . . .

- A **contract**/any part of a contract
- To which a physician is a party
- That has the purpose or effect of **restricting** or **penalizing**
- A physician's ability to engage in the **practice of medicine**
- In any geographic area, for any period of time,
- **After** the physician's **employment relationship** with a hospital, a parent company of a hospital, an affiliated manager of a hospital, or a hospital system **has ended**

Practice of Medicine

- As defined in IC 25-22.5-1-1.1(a)(1) and (2)
- Does not include activities that:
 - Are solely and exclusively executive or managerial; AND
 - Do not involve direct patient care

Noncompete Agreement Includes Any Provision That:

- Prohibits engaging in practice of medicine with a new employer
- Requires physician to obtain employer consent or submit to equitable relief to practice medicine with a new employer

Noncompete Agreement Includes Any Provision That:

- Imposes certain financial penalties or repayment obligations, or requires reimbursement of bonuses, training expenses, or similar payments that . . .
 - (a) apply to physician who has been employed for at least 3 years, AND
 - (b) is based solely or primarily on physician's decision to continue practice of medicine with a new employer
- Key words: "solely"/"primarily"

Noncompete Agreement Includes Any Provision That:

"*The Catchall?*"

Imposes indirect restrictions that limit or deter practice of medicine with a new employer

Noncompete Agreement Definition DOES NOT Include:

- Nondisclosure agreement protecting confidential business information or trade secrets
- What about nonsolicitation of employees and patients?

What Does SEA 475 Say about Nonsolicits?

- Nonsolicit of **current** employees for a 1-year period following physician's employment ending is permissible.
- *"However, **the** nonsolicitation agreement may not restrict . . ."*
 - Patient interactions;
 - Patient referrals;
 - Clinical collaborations;
 - The physician's professional relationships.

Note: Remember that a nonsolicit of employees in Indiana should be limited to those who "have access to or possess knowledge that would give a competitor an unfair advantage."
(*Heraeus Medical, LLC v. Zimmer, Inc.*)

What about financial claw back provisions?

- Claw backs in connection with recruitment agreement, sign-on bonus, relocation assistance, practice investment, tuition assistance, etc.
 - Likely OK (structure < 3 years)
- Question: is there an employment relationship with the H or covered entity?
- If yes, does the K "restrict[]...a physician's ability to **engage in the practice of medicine**. . . . [post-employment]"?
 - Is repayment based "solely or primarily" on doc's decision to practice medicine w/ new employer?
- Structure your claw back provisions to stay outside of the broad definition of a "noncompete agreement."

What about in sale of business and ownership agreement context?

- SEA 475: The term "noncompete agreement" does NOT include:
 - An *"agreement made in connection with the bona fide sale of a business entity when the physician owns more than 50% of the business entity at the time of sale."*
- Argument: This is merely an *example* of something that is NOT a "noncompete agreement."
 - It doesn't *necessarily* follow that it IS a "noncompete agreement" if the physician/seller owned less than 50%.

What about in sale of business and ownership agreement context?

- More importantly:
 - A CNC in the sale of business context doesn't even fit the SEA 475 definition of "noncompete agreement"
 - SEA 475 definition is specifically tied to the time period **after an employment relationship has ended**
 - In contrast, a "sale of business" CNC is tied to the time period after the sale
- Same argument potentially available re CNCs included in ownership agreements...
 - CNC is arguably enforceable because tied to time period **after ownership relationship ends** (NOT after employment relationship ends)

The background of the slide is a blurred photograph of a workspace. On the left, a laptop is open on a wooden desk. In front of it is a notebook and some papers. A cup of coffee is visible in the background. The right side of the slide is a solid white area.

Practical Recommendations

Takeaways

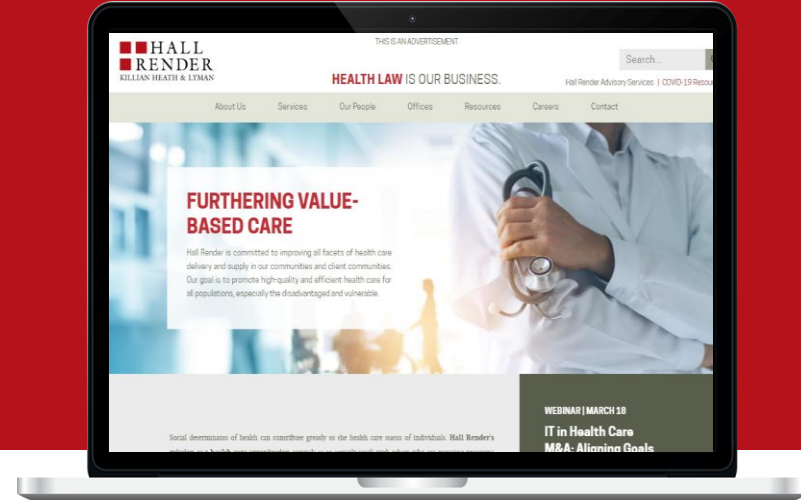
- ✓ Remember the timeline:
 - Agreements entered into prior to July 1, 2025 remain valid even if renewed or amended
- ✓ Review and update template physician agreements going forward
 - Although physician CNCs will not be permitted for covered employers, other contract provisions may still offer protection (i.e., non-solicitation, non-disclosure, return or property, deferred compensation, termination, etc.)
 - Think twice before using "stay or pay" (claw back) provisions for physicians with 3+ years' tenure

Takeaways

- ✓ Understand your risk tolerance
- ✓ When drafting new provisions, give yourself as much leverage as possible
 - Focus on your unique protectable interest and concept of unfairness
 - If interpreting a vague statutory provision, give the judge a reason to side with you!
- ✓ Either way, focus on being an employer of choice
 - Competitive compensation/benefits
 - Physician relationships and retention strategies

THANK YOU

For more information on these topics
visit hallrender.com.



Jon Bumgarner
Attorney
Indianapolis
jbumgarner@hallrender.com



Kevin Stella
Attorney
Indianapolis
kstella@hallrender.com



Dana Stutzman
Attorney
Indianapolis
dstutzman@hallrender.com

This presentation is solely for educational purposes and the matters presented herein do not constitute legal advice with respect to your particular situation.