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CERTAIN PHYSICIAN NON-COMPETES ARE NOW VOID AND UNENFORCEABLE IN FLORIDA

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On June 25, 2019, Governor Ron DeSantis approved House Bill 843. On the surface, the legislation addresses a variety of valid healthcare concerns. However, tucked within the bill is a provision whereby the Florida Legislature amended Florida law governing restrictive covenants by invalidating certain restrictive covenants with licensed physicians. Pursuant to the legislation, an entity that employs all of the physicians who practice a certain medical specialty in one county will not be able to restrict its physicians from practicing that specialty in the same county. If the entity entered into such a restrictive covenant with its physicians, the restrictive covenant will be void and unenforceable.

In its original form, the legislation was introduced by House Speaker Jose Olivia of Miami Lakes and included major healthcare reforms. Meanwhile, and unrelated to Speaker Olivia's legislation, four doctors sought relief through separate legislation to avoid non-compete restrictive covenants within their contracts. The physician's legislation was stalled until Senator Joe Gruters amended and added it into the Senate version of Speaker Olivia's legislation and then into the House legislation. Subsequently, the bill passed without any public debate. While the physicians are not named within House Bill 843, the language of the legislation fits their unique situations. Specifically, the bill requires any restrictive covenant within the scope of legislation to remain void and unenforceable for three years after another entity enters the market in that county and begins offering those specialty services; the last of the non-compete covenants for the four physicians will expire in three years.

Among other things, Senator Gruters argued that non-compete restrictive covenants are bad policy within the medical industry because of the need for patient choice. Undoubtedly, physicians are oftentimes faced with the decision to retire or relocate when they leave their current practice. The new law may make perfect sense for the public as it may increase the public's ability to choose among different specialty groups in a given county where competition is limited. The concern with House Bill 843 is not necessarily what transpired, rather, how it transpired. Florida Statutes Section 542.335, governing restrictive covenants, is currently under comprehensive review by experts in the field as well as members of the Florida Legislature. Accordingly, there is an impending opportunity to achieve uniform statewide change rather than piecemeal exceptions for certain circumstances. Nonetheless, House Bill 843 became effective on July 1, 2019, and will have a varying impact on physician specialists throughout the state

For more information on this topic, please contact Marianne Curtis and Lenny Samuels on the firm's Dispute Resolution Team.

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