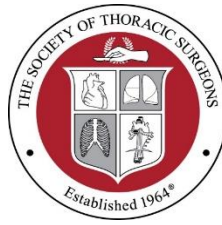


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March 20, 2023

The Honorable Lina M. Khan
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite 1 CC-5610
Washington, DC 20580

Re: Non-Compete Clause Rulemaking, Matter No. P201200

Dear Chair Khan,

On behalf of The Society of Thoracic Surgeons (STS), I write to provide comments on the Non-Compete Clause Rule issued by the Federal Trade Commission. Founded in 1964, The Society of Thoracic Surgeons is a not-for-profit organization representing more than 7,600 surgeons, researchers, and allied health care professionals worldwide who are dedicated to ensuring the best possible outcomes for surgeries of the heart, lungs, and esophagus, as well as other surgical procedures within the chest.

The Federal Trade Commission (FTC) released a proposed rule that would ban non-compete clauses as an unfair method of competition. The rule proposes to make it illegal for an employer to: enter into or attempt to enter into a noncompete with a worker; maintain a noncompete with a worker; or represent to a worker, under certain circumstances, that the worker is subject to a noncompete. The FTC refers to noncompete clauses as a widespread and often exploitative practice that suppresses wages, hampers innovation, and blocks entrepreneurs from starting new businesses that impact approximately 18% of US workers. FTC contends that banning this practice would increase wages by nearly \$300 billion per year and expand career opportunities for about 30 million Americans.

The Society of Thoracic Surgeons supports the FTC proposal to ban non-compete clauses. As of January 2022, 74 percent of physicians are hospital or corporate employees. In a three-year [study](#) of employment performed by Avalere Health, 108,700 additional physicians transitioned to hospital or corporate employment. This trend of hospital or corporate employment is highlighted in the thoracic surgery subspecialty. Most thoracic surgeons perform procedures through a hospital-based practice (44.8 percent) or academic/university-based practice (33.6 percent).¹ **As the majority of thoracic surgeons are employed and not in private practice, they are impacted greatly by the requirements and terms of employment created by employers including non-compete clauses.** Hospital and corporate employee contracts with non-compete clauses often prohibit a surgeon from working within a certain mileage/area. This means that when a surgeon leaves an employment agreement, they must relocate to

¹ Ikonomidis JS, Boden N, Atluri P. The Society of Thoracic Surgeons Thoracic Surgery Practice and Access Task Force-2019 Workforce Report. *Ann Thorac Surg.* 2020;110(3):1082-1090. doi:10.1016/j.athoracsur.2020.04.004

find new work, often uprooting a family system in the process. Additionally, a 2007-2017 study found that 19 percent of hospital markets, which represented 11.2 million Americans, were served by one hospital system.² **The continuation of hospital consolidation creates additional barriers to surgeons with non-compete clauses leaving an employment agreement. It unnecessarily reduces the career opportunities available for providers and affects the geographic distribution of surgeons by locking physicians into a specific employer rather than letting organic demand influence where and for whom cardiothoracic surgeons practice.**

Additionally, several studies have predicted a workforce shortage in cardiothoracic surgery in the U.S. by the year 2035. A projected 61 percent increase in the demand for thoracic surgical procedures from 2010 to 2035 will exacerbate this issue given our aging patient population that will likely require more interventions.³ Physician burnout in cardiothoracic surgery is at an all-time high, likely due to the stress of the COVID-19 pandemic on providers⁴ and unnecessarily being tied to an employer could further physician fatigue leading to continued workforce shortage. **Non-compete clauses create further hurdles for cardiothoracic surgeons' deciding on, or transitioning between, employment opportunities and could disincentivize cardiothoracic surgeons from practicing in certain regions or systems.** The ban on non-compete clauses helps mitigate concerns around employment type and allows for thoracic surgeons to more easily decide on career opportunities that support their personal goals and community needs. By giving providers autonomy to make these decisions, it could help to address the workforce shortage by allowing cardiothoracic surgeons to be more competitive and create unique employment agreements that optimize their accessibility to patients.

Thank you for the opportunity to provide these comments. Please contact Molly Peltzman, Associate Director of Health Policy, at mpeltzman@sts.org or 202-787-1221 should you need additional information or clarification.

Sincerely,



Thomas E. MacGillivray, MD
President

² Johnson, G., & Frakt, A. (2020). Hospital markets in the United States, 2007-2017. *Healthcare (Amsterdam, Netherlands)*, 8(3), 100445. <https://doi.org/10.1016/j.hjdsi.2020.100445>

³ Byrd CT, Williams KM, Backhus LM. A brief overview of thoracic surgery in the United States. *J Thorac Dis.* 2022;14(1):218-226. doi:10.21037/jtd-21-1504

⁴ Bremner RM, Ungerleider RM, Ungerleider J, et al. Well-being of Cardiothoracic Surgeons in the Time of COVID-19: A Survey by the Wellness Committee of the American Association for Thoracic Surgery [published online ahead of print, 2022 Oct 14]. *Semin Thorac Cardiovasc Surg.* 2022;S1043-0679(22)00254-4. doi:10.1053/j.semtcvs.2022.10.002