

Chair Riley, Vice-Chair Hansell, Members of the Committee

My name is Claire Kassakian. I was raised a stone's throw from Oregon in a small railroad town in southwest Montana. My mother was a single parent, a teacher with a very limited income. We lived in a trailer park until my teens. I was an intense student; I earned a full merit-based Honors scholarship to attend college at Montana State University. After graduating, for the next 9 years, I pursued my medical education at Dartmouth and Brown University Schools of Medicine: medical school for 4 years, internal medicine residency for 3, and nephrology fellowship for 2.

I am here to share testimony of my experience with a lawsuit over a non-compete that occurred in late 2015 — my first job out of medical training and why I support SB 13 and SB 169.

In 2014, fresh out of nephrology fellowship, my husband and I moved across the country from Rhode Island to Oregon, a place we still believe to be our permanent home. My husband had been accepted to a 2 year fellowship in medical informatics at OHSU - where he continues to work to address the current COVID crisis. Not unusual at all, I carried over \$100K of medical student debt. Our two kids were 3 months and 2 years old.

I entered my first job with every intention of pouring all I had trained into it. But within several months, it became abundantly clear that I could not, on good conscience, stay with the practice. I was afraid to leave my job, but ultimately, I felt I had no choice due to the consistently poor quality of care the practice delivered and the lack of managerial progress to improve it. I had so much to lose — and ultimately I lost even more than I even feared.

Oregon, and particularly the Portland area, has a shortage of doctors who specialize in kidney medicine (nephrologist). As a nephrologist, I care for patients outside the hospital with complex, severe medical illness including advanced kidney disease requiring dialysis and kidney transplantation. Within the hospital, I see patients with acute kidney failure, frequently in the intensive care unit. I am part of a private practice but volunteer as the head of our clinical rotation educating the Internal Medicine residents at Providence Portland Hospital.

My initial position, starting in Feb 2014, required me to sign a physician employment agreement containing very broad non competition agreements as follows. The language was incredibly restrictive, and the full context can be found in my written comments on the record, but I will highlight a small excerpt now for context:

“For a period of 2 years after the termination of Dr. Kassakian’s employment for any reason (whether voluntary or involuntary), the physician will not, directly or indirectly, take any action that results or may be expected to result in soliciting, diverting, or interfering with any relationship that Pacific Kidney has with any patients or customers of Pacific Kidney. For a period of one year after the termination of Dr. Kassakian’s employment for any reason, Dr. Kassakian will not, without prior consent of Pacific Kidney, directly or indirectly...establish or

otherwise assist any entity or individual in the development of management of any program or service related to Nephrology services within a 25 mile radius of any Health Care facility location where Physician practices.

The American Medical Association (AMA) explicitly advises against covenants like the non-compete I signed stating that *covenants not to compete restrict competition, can disrupt continuity of care, and may limit access to care.*

Ethics Opinion 9.02 of the American Medical Association Code of Medical Ethics states that covenants not to compete restrict competition, can disrupt continuity of care, and may limit access to care. As such, physicians should not enter into covenants that unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specific geographic area on termination of a contractual relationship and do not make reasonable accommodation for the patient's choice of physician. Ethics Opinion 9.06 of the AMA Code of Medical Ethics goes on to say that free choice of physicians is the right of every individual...The individual's freedom to select a preferred system of health care...are prerequisites of ethical practice and optimal patient care.

It also included the following provision "In the event that Dr. Kassakian remains in the Restricted Area but chooses to restrict physician's medical practice in violation of the non-competition covenant, then the Dr. Kassakian agrees to pay liquidated damages in an amount equal to the total cash compensation paid to the physician during the physician's last 12 months of employment."

In October 2015, I announced my resignation to Pacific Kidney and Hypertension. I provided them with 90 days advance notice that I would be accepting employment with another local nephrology practice.

In December of 2015, as outlined in the non-compete clause of my 2014 contract, I wrote a check to Pacific Kidney for 12 months of my salary which was \$145,299.00. I had not solicited patients from Pacific Kidney; in fact, several patients asked where I was going and I told them that I was not allowed to tell them. That check for my year's salary was returned to me.

After the check was returned to me, legal action against me began. A restraining order and preliminary injunction were filed against me. I appeared in court on January 19th, 2016. US district Judge Michael Simon ruled to grant in part and denied in part. Although Judge Simon was concerned about the public interest, as a federal judge, his hands were largely tied by the Oregon statute. The battle continued until settled on February 16th, 2016. At the end of it, my legal bills were \$138,000.

Several patients from Pacific Kidney were witnesses for the case. Several were told by Pacific Kidney that I had "moved out of the area" and that they "didn't know where I had gone." Sometimes after years, patients would find me at my new practice, a practice with a reputation for outstanding care. One patient I actually saw walking down a hall in a hospital, dressed in a

hospital “johnny,” just days after he underwent a kidney transplant. He was a patient I saw on “nocturnal dialysis.” I would see him at 10-11pm on a monthly basis and I was the nephrologist who had referred him for transplant and advocated for him. “Where did you go? Can you be my doctor again?” To this day, when he sees me in the office, he tells me, “You saved my life, Dr. Kassakian. I want you to always be my doctor.” In December, I was nominated as a Portland Top Doctor for the 4th time.

When I think back to my 8 hours long deposition, it was one of the worst days of my life. I will never forget it. I’d been required to sign an onerous non compete to accept my position in Oregon, but once I was part of the practice, I felt I couldn’t continue to be part of a practice with substandard delivery of nephrology care. But in order to be able to practice the medicine I studied for 9 years, I paid a year of my salary and \$138,000 in legal bills as someone fresh out of training. Furthermore, I cannot convey here what an emotional toll this has taken on me. My family has been extremely supportive, and it’s taken a huge toll on them as well. My case is an exception because most people don’t have the funds to fight; I am so grateful to my husband’s family for helping us make this possible.

I am here today because I don’t want this to happen to other physicians or the workers you’ve already heard from today. I don’t want anyone else with a trained mind and loving heart to almost leave medicine entirely because of an experience this devastating.

The people of Oregon deserve excellent medical care. They deserve unfettered access to care. They deserve continuity of care. The Bills 169 and 13 support medical excellence in the state of Oregon.