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May 1, 2023

To: Jobs and Economic Development, Labor and Industry Conference Committee Members:

Senator and Chair Champion	Representative and Chair Hassan
Senator and Chair McEwen	Representative and Chair Xiong
Senator and Vice-Chair Mohamed	Representative and Chair Nelson
Senator Hauschild	Representative and Chair Olson
Senator Gustafson	Representative and Vice-Chair Berg

Re: Jobs and Economic Development, Labor and Industry Omnibus Bill

I write today to seek consideration of an amendment to the final bill draft related to employee non-competition agreements. In general, Boston Scientific understands the Legislature's desire to improve worker mobility and competitiveness, though in certain circumstances, the application and enforcement of a non-compete agreement may remain necessary to protect the legitimate interests of the company.

Specifically, Boston Scientific requests that language found within MN HF 295 be inserted into the current draft under consideration by the Conference Committee:

Subd. 2. Covenants not to compete void and unenforceable. (a) An employer may not require an employee to execute a covenant not to compete if, at the time such covenant is executed, the employee earns or is expected to earn total annual compensation equal to or less than the median family income for a four-person family in Minnesota, as determined by the United States Census Bureau, for the most recent year available.

Adding this provision would create a reasonable and necessary exception to a complete ban. While the exceptions in the current bill do allow companies to protect sales facing employees from contacting their former customers, the above exception would also allow them to apply non-competition agreements, in limited circumstances, to persons with access to company proprietary and confidential information, trade secrets and other information that relates directly to the development, production and sale of new medical technology and who are highly compensated and work within specialized functions including R&D, production, business unit leadership, executive committees, etc., but who do not have a direct connection to customers. And under the language that exists without this proposed amendment, such employees are subject to little or no restriction absent proof that they've already damaged their previous employer by disclosing proprietary information or trade secrets.

State law has historically been the principal authority governing enforceability of non-compete clauses. Non-competition provisions are widely used and have been upheld by courts around the country, including Minnesota, for many years. Generally, courts subject non-competition restrictions to more

exacting scrutiny than other contractual terms, but most states enforce them so long as they are reasonable in time, scope, and geography, and protect an employer's legitimate business interests (i.e., trade secrets, specialized training, or customer relationships). The current bill before the Conference Committee already acknowledges the need for such agreements in certain circumstances by exempting non-disclosure agreements and non-solicitation agreements (agreements restricting the ability of sales facing employees to use client or contact lists or solicit customers of the prior employer).

Incorporating the provision related to salary threshold would help further eliminate illegitimate and/or unscrupulous application of non-competition agreements where there is no basis for such application, while helping to protect those legitimate business interests in cases where they may reasonably be applied. It is critically important to the med-tech industry to be able to implement reasonable restrictions on the mobility of higher compensated employees who have knowledge of proprietary and confidential company information to protect the integrity of new product development and existing product improvements, and thus to continue to provide innovative and lower cost solutions to the complex health problems of patients.

Thank you for consideration of this request. I remain at your disposal should you wish to clarify any Boston Scientific positions or applications of non-competition agreements as outlined above.

Respectfully,



Dan Gerhan
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cc: Travis Reese, Committee Administrator