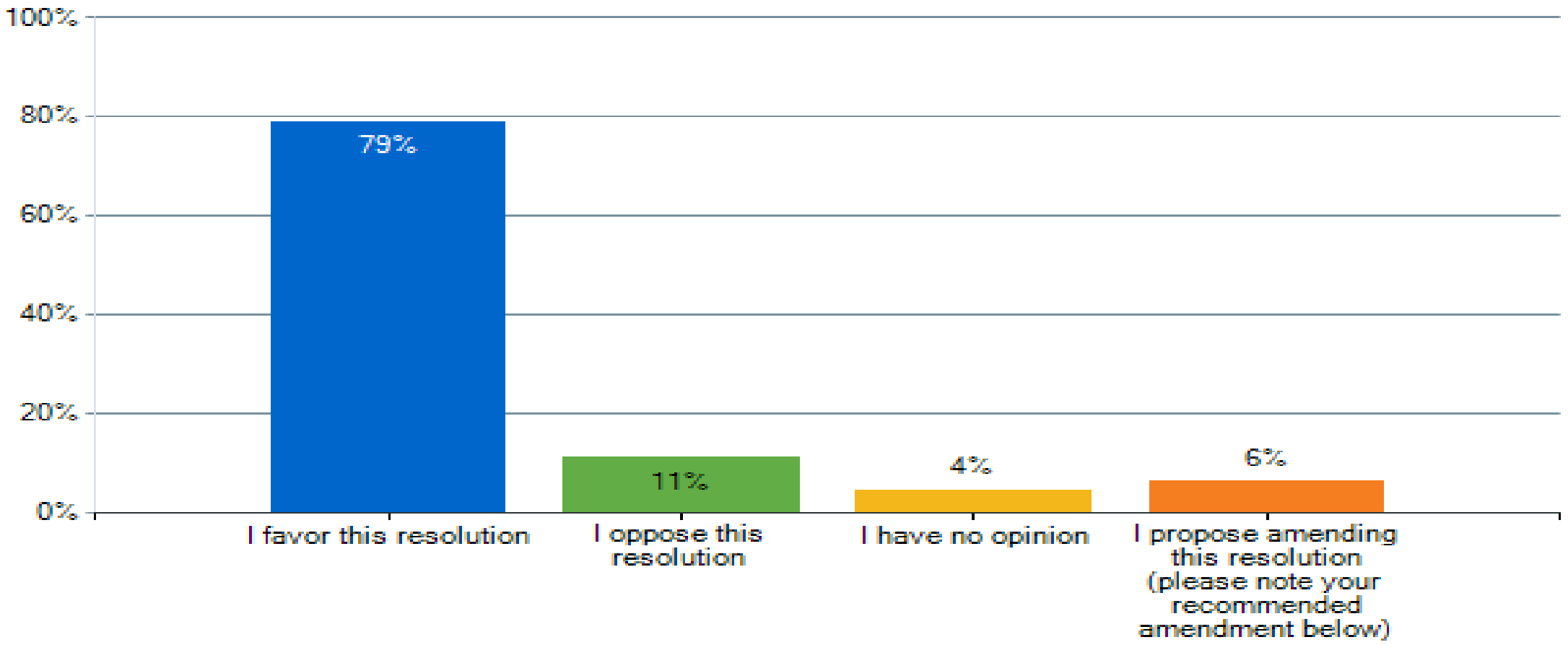
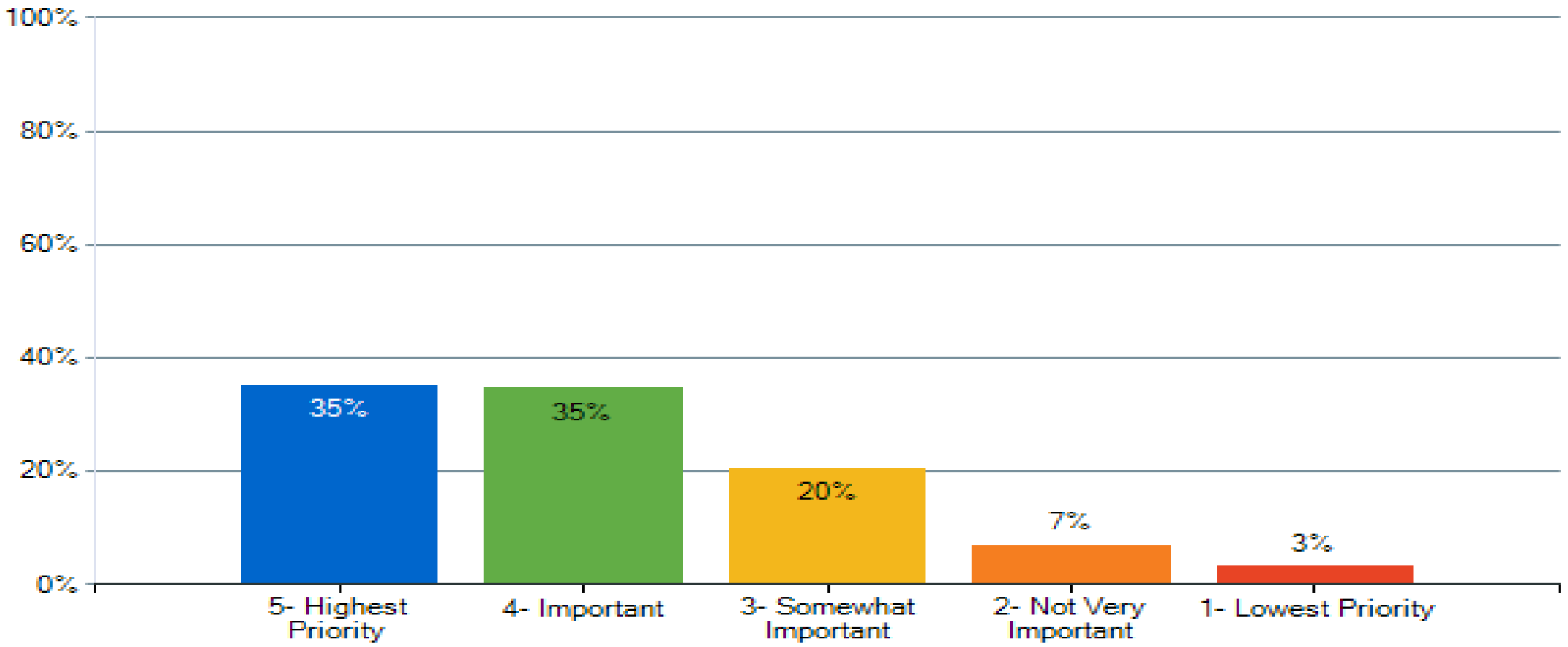
Inference of Non-Compete/Restrictive Covenant Clauses to Prevent Physicians from Earning Additional Income



165 responses

Please indicate your view of this resolution as an ISMS priority.



162 responses

Comments		
SR No.	Response No.	Response Text
1	3	I support.
2	11	Agee with the proposal for large organizations
3	12	I am not clear on why the gender issue is included. Does this resolution infer that the application of the resolution would be directed toward women, or if legislation is designed, should it be gender specific? It would seem that two issues are being conflated which makes for bad arguments and bad writing. The covenant issue is important. The gender equity issue is important. The resolution is poor.
4	13	I do not think it is appropriate for any physician working for a specific entity to do work for others if the contract so specified. This is clearly a legal issue, but a contract is a contract. If you work for any entity, and agree to their rules, then you should follow their rules. If you don't like the contract, walk away. Work somewhere else. Life is tough. Rules are rules. Contracts are contracts. Ask any lawyer.
5	17	Non-competitive outside work on a physician’s own time should be allowed. Competing directly with the employer who has expended resources to hire you, hire staff for you, promote you in the community, manage your credentialing, etc. is not ok. In that latter context, restrictive covenants are reasonable.
6	30	Agree with the 'resolved" proposal but not the Whereas statements. Why single out women.
7	33	The fact that woman make less money has nothing to do with the resolution. Woman work less hours. Working in my job there is no difference in their pay!
8	39	These are not topics for a single piece of legislation. There is great potential for harm in practicing outside of the scope of one's training and therefore this part of the resolution should be made distinct to stand on its own. (For example, you certainly wouldn't want an internist to suddenly decide they could practice vascular surgery, or the other way around) Certainly, all physicians should be allowed to participate in Telehealth or telemedicine. Lastly, indeed, Non-compete clause do little to protect large practices and corporations and indeed little to protect small practices who split apart for one reason or another. The most significant result of non-compete clauses is the unnecessary need for physicians to continue to work under conditions they find grating and/or dangerous or uprooting their families for the protection of a large and marginally faceless, uncaring institution. Non-competes are an

		anachronism that should go the way of the dinosaur as they allow employers to engage in abusive hiring practice under unacceptable workplace conditions knowing that those subject to the non-compete are essentially enslaved by the conditions which the non-compete shoves down their throats.
9	42	Agree
10	45	I agree with the policy against non-compete clauses. I think the wording on "Physician Income" may be unnecessary and could create a public perception problem. I would recommend removing this wording from the resolution and the preamble
11	49	agree
12	50	Poorly worded "resolves."
13	52	Full support
14	53	Non-complete causes are essential
15	65	Eliminate the following: "not in the specialty that they are currently employed and positions".
16	67	Two of the five Whereas clauses refer to inequality of physician's income based on gender, certainly a problem worthy of ISMS concern, but there is no explanation as to how the Resolves would address that issue. The second Resolve does not change current ISMS policy and the first Resolve addresses an issue (practicing outside one's current specialty) which is not explained in the Whereas portion and is probably not an issue for legislation. The problems of the relationship of physicians to their hospital employers are serious and worthy of ISMS action, but this Resolution is not the way for ISMS to approach them.
17	70	I support the resolution as it is.
18	72	If you don't want a restrictive covenant, then negotiate it out or don't sign the contract.....if you accept the income guarantee and benefits, then you should expect the organization to protect their investment
19	78	Do not understand the problem. Why are we advocating for allowing out of specialty of current employment and not against the entire concept of restrictive covenants and non-compete clauses in general, including the specialty of employment ?
20	87	I am in favor of the above resolution.
21	90	I agree 100% with this resolution. Restrictive covenants were developed for another era in employment and should be abolished in the current work environment. This provides unfair leverage of the employer over the employee.
22	91	This is very important!
23	94	As long as providers are not working far outside of their scope of practice, I do not take issue with this resolution.

24	104	The game of healthcare is clearly rigged in the favor of large health systems. They are monopolies, they can exploit physicians and get away with it because of Federal immunity in court from litigation by physicians. They control the physical assets of health care, control the money and are treated preferentially by government and payers. As a result they exploit physicians and nurses as “fungible”. The “non compete” just makes the exploitation worse. And yes the heads of these organizations pay themselves very well for this legalized extortion. The has to stop and that starts by getting rid of non compete clauses.
25	105	In modern medicine where CMS and insurance companies dictate all aspects of treatment and pricing, there is very little in the way of “trade secrets” held by any individual physician practice or clinic. Government mandates such as EHR and Meaningful Use have promoted a sense of uniformity to the practice of medicine. Employing hospitals use non-compete/restrictive covenants as instruments of coercion or retaliation. Physicians have lost influence over the practice of medicine because the ability to leave an employer means uprooting everything in your life because of these contract covenants. Non-compete/Restrictive Covenants are unfair to patients. CMS states patients have a right to provider choice, yet these covenants do exactly the opposite. Attorneys have made these covenants illegal for themselves because everyone is entitled to a vigorous defense, however not everyone is entitled to the medical provider of their choice, as mandated by CMS?
26	110	As far as I can tell this seems to be a weakened version of the prior policy. Is this to replace prior policy because prior policy could not be enforced? Regarding the language: This seems to have a very narrow scope and apply to very few doctors. How many doctors want to practice outside of their specialty? How is the specialty defined? For example, does an internist that now wants to treat women's medical problems count as "outside of the specialty" because of the narrowed scope? Or does a bariatric surgeon that wants to do general surgery practicing outside his specialty because of broadened scope? Does the first resolve regarding telehealth and telemedicine refer to work within or outside their specialty? This resolution has too many loose ends and unanswered questions.
27	112	Non compete clauses can become priority conversation of any "deal." Quite a change if no longer exist. Believe California has enacted this legislation.
28	129	I am under the assumption the physician is competent in the non-specialty work they wish to pursue. Stephen Kappel, MD
29	142	This makes sence.
30	154	I disagree with w policy
31	155	This is a critical proposal and long-overdue. Fighting restrictive covenants in general would be welcome project.

		The impact of buyouts and consolidation by larger healthcare corporations make it nearly impossible to have any negotiating power or options for employment anywhere outside of the largest cities.
32	161	Restrictive covenants need to be abolished.
33	163	Restrictive covenants are fair for private practices. It is not fair to recruit a doctor and train at large expense and loss of income to those in group/practice and have someone leave and open office across the street. I have no problem with hospitals not being able to have covenant but should be able to recoup expenses above what doctor earned for hospital against what he/she was paid
34	172	With pending shortages due to covid, I support this resolution but would like to go further and endorse that all restrictive convenants be eliminated, including those tied to the person's primary area of employment..
35	180	I agree with relaxing Restrictive Covenants that do not allow the currently employed provider to work for other similar employers in the same geographical area as the current employer that the employee is currently contracting with. However, I do NOT support relaxing Restrictive Covenants that prevent an employee from soliciting the contract from the hospital/facility that the current contracted employer provides medical services for. I also do NOT support relaxing Restrictive Covenants that prevent the employee from disclosing proprietary, privileged information to non-authorized persons. Further, I do NOT support relaxing Restrictive Covenants that prevent departing employees/providers from "stealing" current employees/providers. There is much time and effort that goes into maintaining a medical contract; certain aspects of Restrictive Covenants are appropriate in relation to the investment in time, funds and effort. The prospective employee/provider may be able to negotiate changes to the Restrictive Covenant prior to starting employment if certain aspects of it are not to his/her liking.
36	183	I oppose this resolution as written. I don’t understand what “not in the specialty they are currently employed” means from a practical standpoint. It is also too specific when it specifies telehealth/telemedicine.
37	186	All of these carveouts can be negotiated as part of a contract. Contracts are agreements between two consenting parties. Laws like these are done with good intentions but could have serious repercussions. All non-compete issues should be handled with the parties signing the contracts.
38	193	I support strongly the elimination of non-compete clauses in employment contracts so that physicians have the freedom of professional mobility within their local community I am confused a bit about the first "resolution" in terms of supporting physicians who take positions "not in the specialty that they are currently employed." I would consider offering further clarity about the meaning of such.

		Do you mean, for example, that a radiologist wants to become a fiction writer? Or do a medical podcast? Physicians technically are only licensed for certain specialty areas and cannot work in others without a license. Or perhaps, the meaning is just that a physician be allowed to take other professional medical jobs beyond the contracted job with a hospital or medical group? Yet, I would also argue that physicians have an obligation to hospital/medical groups, with which they are employed, to separate out their titles there from other career pursuits so that whatever they do in those other realms does not imply endorsement by their employers. I do think much needs to be done to clarify telehealth roles as part of employment or as a side position separate from the employment contract. The key is how the physician may present/utilize his/her/their credentials/roles in one setting versus another.
39	194	Language of the resolution is a little confusing. ISMS should oppose non-compete clauses in any form. Don't know why have these special situations as a separate item. Please make the aim of the resolution clearer.
40	198	First resolved could be interpreted as 2 separate items, working in a different field, and working in telemedicine, or working in telemedicine in a second field. The physician would need to be qualified to practice in a different field and would need to get additional or separate liability coverage for the work product not covered by their employer. There would then need to be access to this supplemental malpractice insurance, either individually or covered by a second employer or entity. Would like to see this sent to a committee and to legal for an opinion on how this could be implemented to see how much effort should be spent in support. The second resolved is reaffirmation of existing policy.