

Physician's Money Digest – A Beginner's Guide to Physician Non-Compete Agreements

FEATURED ATTORNEY



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A physician restrictive covenant, also referred to as a “non-compete agreement,” is a clause or section in a physician’s contract whereby the physician (employee) agrees not to engage in his or her chosen profession in competition with the employer.

Physician restrictive covenants can be as far reaching as preventing a physician bound by the restriction from practicing medicine within any of the states where the employer does business, to as narrow as prohibiting the restricted physician from practicing within one square block of a single medical office for one month. (These are of course the two extremes and in real life scenarios the restriction is generally somewhere in between these extremes.)

The legal enforceability of a physician restrictive covenant varies widely by state, is almost always highly factually based, and frequently relies on a “reasonableness” standard. Courts in most states do not favor, and will likely therefore invalidate, any physician restriction agreement that would prohibit a physician from earning a living and supporting a family. However, courts in most states also want to encourage businesses to operate within their borders and do not want to invalidate agreements entered into by two educated consenting parties.

There are three primary questions I would focus on if I was a physician employer or physician employee contemplating a restrictive covenant. These are also some of the factors many courts will consider when determining the restrictions enforceability.

1. Time

How many days, months, or years will the restriction last?

2. Scope

What land area is the restriction encompassing?

3. Type

What type of medical practice is restricted? (i.e. is the prohibition on “medicine” as a whole, or is the restriction on a specified type of medical practice?)

A good general rule of thumb, as far as legal enforceability is concerned, is that the shorter the length of time, the narrower land area encompassed and the more specific the type of medical practice encompassed, the more likely it is that the restrictive covenant will be enforced.

Some important questions to consider from the employer perspective:

- Have you expended significant energy and/or expense in recruiting the prospective employee physician?
- Do you have substantial resources that the prospective employee physician will be using?
- Have you put in the time and shouldered the costs to build your business?
- Have you built up an established patient base?
- Have you spent significant money advertising?
- Does your practice enjoy a good reputation?

If you are an employer and your answer to a majority of the above questions is “yes” you will want to ensure that all of your employees are restricted to the fullest extent permissible by law.

Some important questions to consider from an employee perspective:

- Is this your first employment as a physician since graduating?

If your answer is “yes” it is unlikely that you will be in a strong negotiating position in terms of the restrictive covenant being agreed upon.

- Do you plan on living and/or working in an area encompassed by the restrictive covenant after your employment with this employer terminates?
- If the answer is “yes” you (or your legal counsel) should seek to “carve out” the specific land or type of practice you have aspirations towards in the future.
- Is your prospective employer a small private practice?

If your answer is “yes” your negotiations regarding your restrictive covenant may have more flexibility. Is your prospective employer a large hospital system?

If your answer is “yes” your room to negotiate may be limited due to the rigid nature of most large hospital contractual agreements with individual physicians.

It is strongly recommended that if you are a physician employer looking to hire a physician employee or if you are a prospective employee that you consult with local legal counsel experienced in the area of physician employment agreements prior to entering into any contract or agreement.

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