

Non-Compete Laws Affecting Health Care Professionals in Various U.S. Jurisdictions

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Many physicians and other health care workers are familiar with restrictive covenants like non-competition and/or non-solicitation agreements, either as employees who have been asked to sign such covenants as a condition of their employment or as business owners seeking to enforce such covenants to protect their medical practices from competition. These covenants are usually designed to prohibit physicians or other practitioners from leaving and setting up a competing practice nearby using patient contacts, information, and/or training that they received during their employment or association with the former employer.

Restrictive covenants generally are regulated by state laws and cases, which can

differ markedly from one state to the next. For physicians and some other health care professionals, there can be an additional level of complexity in the analysis of such covenants, because many states, in light of the unique position the medical profession holds in the public interest, apply special rules to covenants that restrict medical practice. Courts considering such covenants may ask whether enforcement will cause a shortage of doctors in a particular area, or within a particular specialty. A paramount consideration usually is the right of patients to obtain treatment from the physician or other health care professional of their choice.

By statute, several states that may allow non-competes generally (provided they are reasonable and protect legitimate business interests) will not enforce them at all against physicians. Massachusetts was an early adopter, in 1977, of a statutory prohibition on physician non-competes. Mass. Gen. Law Ch. 112 § 12X renders void any non-compete provision restricting “the right of a physician to practice medicine in a particular locale and/or for a defined period of time.” In the early 1980s, Delaware and Colorado enacted similar laws. 6 Del. Code Ann. § 2707; Colo. Rev. Stat. § 8-2-113.¹ In 2016, Rhode Island followed suit and enacted a law just like Massachusetts’ statute. R.I. Gen. Laws §5-37-33.

Some other states do not prohibit physician non-competes but apply stricter standards to such agreements than they do to employee non-competes generally. For example, enacted in 2007 and amended several times thereafter, Tennessee’s statute allows physician (including radiologist) non-compete provisions if they: (1) are in writing; (2) last no longer than two years after the physician’s employment is terminated; and (3) either (a) are geographically limited to the greater of the county where the physician is employed or a ten mile radius of the primary practice site; or (b) there is no geographic restriction, but the physician is restricted from practicing at any facility in which the employer provided services during the physician’s time of employment. Tenn. Code Ann. § 63-1-148.

Texas law allows physician non-competes provided that the covenant must: not deny the physician access to a list of the patients seen or treated within one year of termination of employment; provide access to medical records of the physician’s patients upon proper authorization; provide for a buyout of the covenant by the physician at a reasonable price; and allow the physician to provide continuing care and treatment to a specific patient or patients during the course of an acute illness. Tex. Bus. & Com. Code Ann. § 15.50.

A New Mexico statute first enacted in 2015 prohibits provisions in agreements which restrict the right of healthcare practitioners (including physicians, osteopathic physicians, dentists, podiatrists and certified registered nurse anesthetists) to *provide clinical healthcare services*.² (That limitation does not apply to agreements between shareholders, owners, partners or directors of the practice.) The law, however, does allow non-disclosure provisions relating to confidential information; non-solicitation provisions of no more than one (1) year; and imposes reasonable liquidated damages provisions if the practitioner does provide clinical healthcare services of a competitive nature after termination of the agreement. In addition, healthcare practitioners employed by the practice for less than three (3) years may be required, upon termination, to pay back certain expenses to the practice, including loans; relocation expenses; signing bonuses or other incentives related to

recruitment; and education/training expenses. N.M. Stat. § 24-11-1 *et seq.*

And a Connecticut law enacted in 2016, rather than prohibiting physician non-competes, limits the allowable duration (to one year) and geographical scope (up to 15 miles from the “primary site where such physician practices”) of any new, amended or renewed physician agreement. The law also renders physician non-competes unenforceable if the physician’s employment or contractual relationship is terminated without cause. Conn. Gen. Stat. §20-14p(b)(2).

Other states may have, or may be considering enacting, statutes restricting non-competes and related agreements for healthcare providers. The trend is certainly toward limitations on such agreements. Accordingly, consultation with local legal counsel regarding these issues is highly recommended for any person or entity practicing in the healthcare industry.

[1] Under Delaware and Colorado’s non-compete statutes, physicians can be required to pay damages “reasonably related to the injury suffered” by a breach of any such agreement. The Colorado statute was amended in 2018 to clarify that physicians may disclose their continuing practice and provide new contact information to any of their patients who have a “rare disorder,” and not be subject to claims for damages.

[2] This prohibition was expanded in 2018 to include certified nurse practitioners and mid-wives, and to prohibit the use of choice of forum and choice of law agreements to prevent circumvention of the prohibition.

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