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Health Care Non-Competes

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A Practice Note discussing non-compete agreements in the health care sector, examining the legal and policy considerations impacting their enforceability. It highlights the unique challenges posed by health care non-competes, including patient access and continuity of care, and reviews state-specific statutes that restrict or prohibit these agreements for various health care workers. This Note discusses alternative restrictive covenants, such as non-solicitation and non-treatment agreements, and provides insights into the jurisdictional variations in non-compete enforceability. It also addresses ethical concerns raised by health care non-competes, particularly those affecting physicians, and examines the implications of telemedicine and health care deserts on non-compete enforcement. This Note offers guidance on best practices for drafting and enforcing non-competes. It is jurisdiction-neutral but will be useful to employers and their counsel in all jurisdictions. For information on state law requirements, see Health Care Non-Compete State Law Chart: Overview and Quick Compare Chart, State Non-Compete Laws.

The enforceability of non-compete agreements has long been the subject of civil litigation and arbitration between contracting parties. Non-competes are agreements that limit a worker's ability to engage in certain post-employment activities. Traditional non-competes restrict workers from engaging in competitive activity for a designated time period, typically within a specified geographic area.

In recent years, federal and state legislatures and regulatory agencies have more broadly targeted non-competes and other restrictive covenants for reform or even elimination. Non-competes create an inherent tension between an employer's need to protect legitimate business interests, such as trade secrets, confidential information, and client relationships, and employees' rights to earn a living and work in their chosen profession and location.

Non-competes with health care professionals present unique challenges and considerations. The enforceability of these agreements may be influenced by patients' rights to access, choose, and continue to receive treatment from specific health care professionals, and also by the lack of available care in certain areas. In recognition of these public policy concerns, many states have enacted laws restricting or prohibiting non-competes with certain health care professionals.

Health care employers often use other restrictive covenants in addition or as an alternative to non-competes. These include:

- Non-solicit agreements, which restrict health care professionals from soliciting certain patients for a period of time.
- Non-treatment agreements (also known as non-acceptance or non-service agreements), which prohibit health care professionals from treating certain patients for a specified time period (see Non-Treatment Agreements).

This Practice Note discusses the interplay of law and policy considerations regarding non-competes and other restrictive covenants entered into by:

- Health care employers, including:
  - hospitals (both for-profit and non-profit entities);
  - private medical practices and partnerships; and
  - staffing agencies.
- Health care workers, including professionals and practitioners such as:
  - doctors;
  - nurses;
  - physician assistants;
  - home health aides; and
  - other non-physician health care practitioners.

This Note also summarizes select state law provisions regulating non-competes in the health care industry and discusses the challenges of enforcing non-competes with health care professionals, including those providing telemedicine services.

For 50-state comparisons of non-compete laws and requirements in the health care industry and more generally, see Health Care Non-Compete State Law Chart: Overview and Quick Compare Chart: State Non-Compete Laws.

For more about post-employment restrictive covenants, see Practice Note, Non-Compete Agreements with Employees and Restrictive Covenants Toolkit.

For a sample non-compete agreement, see Standard Document, Employee Non-Compete Agreement.

The Legal Framework Governing Health Care Non-Competes

Despite recent efforts to ban most post-employment non-competes, there is currently no federal law specifically addressing non-competes, non-solicits, or non-treatment agreements for health care workers. (For the latest on those efforts, see FTC Non-Compete Clause Rulemaking Tracker.) The enforceability of these agreements therefore depends on the applicable state law.

Although state non-compete laws vary dramatically, they generally can be categorized by one of the following approaches to health care professionals:

- **Blanket non-compete bans.** Several states, such as California, Minnesota, Oklahoma, and North Dakota, effectively ban most non-competes, with limited exceptions. These non-compete bans apply equally to health care professionals.
- **Health care-specific statutes.** More than 20 states have enacted statutes prohibiting or otherwise limiting the enforceability of physician or health care worker non-competes. These laws often impose additional or more stringent limitations on the use of non-competes in the health care sector than in other industries (see Specific Health Care Non-Compete State Statutes).
- **General state non-compete regulations:** In all other states, health care non-competes are governed by either:
  - a statute governing non-competes generally, without any health care-specific restrictions or requirements (see Generally Applicable Non-Compete Statutes); or
  - a common law reasonableness analysis, if there is no generally applicable non-compete statute (see Common Law Reasonableness Analysis).

Specific Health Care Non-Compete State Statutes

Many states have enacted statutes specifically regulating the use of non-competes in the health care context. Statutes limiting the enforceability of health care non-competes may help to:

- Preserve patient choice.
- Improve access to health care, especially in rural communities (see Health Care Deserts).
- Allow for continuity of therapeutic relationships between patients and health care providers.

State Statutes Banning Certain Health Care Non-Competes

Several states have statutes containing outright bans on non-competes with particular classifications of health care workers. For example, laws generally prohibit non-compete agreements in:

- Massachusetts with:
  - physicians (M.G.L. c. 112, § 12X);
  - nurses (M.G.L. c. 112, § 74D);
  - psychologists (M.G.L. c. 112, § 129B); and
  - social workers (M.G.L. c. 112, § 135C).

- New Hampshire with
  - physicians (N.H. Rev. Stat. § 329:31-a);
  - nurses (N.H. Rev. Stat. § 326-B:45-a); and
  - podiatrists (N.H. Rev. Stat § 315:18).
- Indiana with primary care physicians who practice:
  - family medicine;
  - general pediatric medicine; and
  - internal medicine.

  (Ind. Code § 25-22.5-5.5-2.5(b).)
- Rhode Island, with licensed physicians (R.I. Gen. Laws § 5-37-33).
- Effective July 1, 2025, Wyoming, with physicians (S.F. 107, Wyo. 68th Leg. 2025 Gen. Sess. (Mar. 19, 2025); Wyo. Stat. Ann. § 1-23-108(b)).
- Effective July 15, 2025, Arkansas with:
  - physicians and surgeons licensed under the Arkansas Medical Practices Act (Ark. Code Ann. §§ 17-95-201); and
  - osteopathic physicians licensed under Ark. Code Ann. § 17-91-101.

  (S.B. 139, An Act to Clarify That a Covenant Not to Compete Agreement Is Unenforceable for Certain Licensed Medical Professionals, adding a new section to Ark. Code Ann. § 4-75-101(k).)

State Statutes Limiting Health Care Non-Competes

Most state laws do not completely ban non-competes in the health care industry. Indeed, there are countervailing policy considerations that can weigh in favor of allowing health care non-competes, such as the health care provider's or medical practice's need to:

- Protect confidential information, such as patient records and business plans for a medical practice.
- Ensure the stability of a sufficient number of health care providers within an existing practice group.
- Preserve patient-practice relationships, which may promote continuity of care.
- Sustain revenues and profitability of medical practices.

States that restrict non-competes for certain health care workers, without imposing outright bans, take various approaches. The laws may, either alone or in combination:

- Focus on certain specialties or positions.
- Limit the duration of enforceable restrictions.
- Limit the geographic scope of enforceable restrictions.
- Declare non-competes unenforceable if a health care worker was terminated without cause.
- Allow for or require notice to patients of a health care worker's departure.
- Encourage patient choice and therapeutic continuity by allowing patient-authorized transfer of medical records.
- Invalidate non-competes for employees who earn less than a minimum annual compensation threshold.

For example, Maryland recently enacted a statute restricting non-competes for certain health care professionals. Effective July 1, 2025, non-compete agreements in Maryland are void with:

- A health care employee who:
  - is required to be licensed under the Health Occupations Article, such as licensed dentists, registered nurses, optometrists, pharmacists, physicians, podiatrists, counselors and therapists, psychologists, and social workers;
  - provides direct patient care; and
  - earns $350,000 or less in total annual compensation.
- A licensed veterinary practitioner or veterinary technician.

Under the new law, non-competes are only enforceable against health care employees earning more than $350,000 annually if the restrictions do not either:

- Exceed one year from the last day of employment.
- Cover more than 10 miles from the employee's primary place of employment.

(Md. Code Ann., Lab. & Empl. § 3-716.)

Tennessee law also imposes restrictions on non-competes with covered health care providers, including podiatrists, chiropractors, dentists, optometrists, physicians, osteopathic physicians, and psychologists, but not physicians specializing in emergency medicine. Non-competes with covered providers are enforceable only if:

- The agreement is in writing and signed by the health care provider and contracting entity.
- The restriction is for two years or less.
- The geographic restriction, if any, does not exceed the greater of:
  - a 10-mile radius from the provider's primary practice site; or
  - the county where the primary practice site is located.

  If there is no geographic restriction, the provider can only be restricted from practicing their profession at any facility where the employing or contracting entity provided services while the provider was employed with that entity.

(T.C.A. §§ 63-1-148 and 63-6-204.)

Additional conditions apply in Tennessee to non-competes with certain employing entities, including:

- Hospitals (T.C.A. § 63-6-204(f)(2); see also T.C.A. § 68-11-205(b)(2), (3)).
- Renal dialysis clinics (T.C.A. § 63-6-204(g)(2), (3); see also T.C.A. § 68-11-205(c)(2), (3)).
- Faculty practice plans (T.C.A. § 63-6-204(h)).
- Nursing homes (T.C.A. § 68-11-205(f)(2)).

In Texas, a non-compete with a licensed physician is enforceable only if it:

- Does not deny the physician access to a list of patients whom the physician had seen or treated within one year of the end of the employment relationship.
- Provides access to patients' medical records with the patient's authorization and copies of those medical records for a reasonable fee.
- Provides that any access to a list of patients or patients' medical records cannot require the list or records to be in a different format than as maintained, except by mutual consent of the contracting parties.
- Provides for a buy-out of the covenant by the physician at a reasonable price or, at the option of either party, as determined by a mutually agreeable arbitrator (see Buy Out Provisions).
- Provides that the physician may continue providing care and treatment to a specific patient or patients with an acute illness even after the contract or employment has terminated.

(Tex. Bus. & Com. Code Ann. §§ 15.50 to 15.52.)

In addition to other restrictions, several state laws render physician non-competes unenforceable if the employing entity terminates the employment relationship or terminates it without cause. These include:

- Connecticut (if the employer terminates the employment without cause) (Conn. Gen. Stat. Ann. § 20-14p(b)(2)).
- Indiana (if the employer terminates the employment without cause or the physician terminates the relationship for cause) (Ind. Code § 25-22.5-5.5-2.5(b)).
- Pennsylvania (if the employer terminates the employment) (35 P.S. § 10324(a), (b)).

Sale of Business Exceptions

Several state statutes that restrict the enforceability of non-competes with certain health care professionals include exceptions for covenants entered into in connection with the purchase or sale of a business or partnership interest.

For example, Tennessee's statute, which sets temporal and geographic limits on enforceable health care non-competes, also provides that non-competes made in conjunction with the purchase or sale of a health care provider's practice may restrict the provider's right to practice if the duration and geographic scope of the non-compete are reasonable. The statute creates a rebuttable presumption that the temporal and geographic limitations agreed to by the parties are reasonable. (T.C.A. §§ 63-1-148 and 63-6-204.)

Rhode Island's statute provides that non-competes for physicians and advanced practice registered nurses are generally prohibited but are enforceable in connection with the purchase or sale of a practice if the non-compete restriction is no longer than five years (R.I. Gen. Laws §§ 5-37-33 and 5-34-50).

Pennsylvania's health care non-compete statute also has exceptions for the sale of a business. The Pennsylvania Fair Contracting for Health Care Practitioners Act provides that non-competes with covered health care practitioners generally are enforceable only if both:

- The agreement is no longer than one year.
- The health care practitioner was not dismissed by the employer.

Covered health care practitioners include:

- Medical doctors.
- Doctors of osteopathy.
- Certified registered nurse anesthetists.
- Certified registered nurse practitioners.
- Physician assistants to an osteopathic or medical practice.

These restrictions, however, do not apply to covenants connected to:

- The sale of a health care practitioner's ownership interest in an entity or all or substantially all the assets of the entity.
- Transactions resulting in the sale, transfer, or change in control of the entity.
- An ownership interest in the business entity.

(35 P.S. §§ 10321 to 10325.)

Other states with sale of business exceptions to health care non-compete bans or restrictions include:

- Montana (Mont. Code Ann. § 28-2-724(3)).
- South Dakota (SDCL 53-9-11.2).
- West Virginia (W. Va. Code § 47-11E-4).

Buy Out Provisions

Some statutes addressing health care non-competes allow physicians the right to buy their way out of the non-compete. For example, in Texas, a non-compete with a licensed physician is not enforceable unless, among other requirements, the agreement provides an opportunity for the physician to buy out of the covenant at a reasonable price or, at the option of either party, as determined by a mutually agreeable arbitrator. If the parties are unable to agree on a reasonable price or the selection of an arbitrator, a court may order the parties to arbitrate to determine a reasonable amount. (Tex. Bus. & Com. Code Ann. §§ 15.50(b)(2).) The failure to include the required buyout provision renders the agreement unenforceable (*LasikPlus of Tex., P.C. v. Mattioli*, 418 S.W.3d 210, 219-20 (Tex. Ct. App. 2013) (court had no authority to enforce or reform an agreement lacking a buyout provision)).

Under Tennessee law, when a physician sells their practice, any employment agreement or medical practice sale agreement restricting the physician's right to practice after the sale must both:

- Allow the physician to void the restriction on the physician's practice by buying back the physician's medical practice either:
  - for the original purchase price of the practice; or
  - if the parties agree in writing, at a price not to exceed the fair market value of the practice at the time of the buy back.
- Not require that the physician give more than 30 days' notice to exercise the repurchase option, provided that this does not otherwise affect any contract termination notice requirements.

If the buy back provision is dependent on determining the fair market value of the practice, the contract also must specify the method of determining fair market value by independent appraisal, if the parties cannot agree. (T.C.A. § 63-1-148(b).)

Liquidated Damages Provisions

Although many states allow for liquidated damages provisions in health care non-competes, the damages generally must be reasonably related to an actual injury. For example, although Colorado law generally deems non-competes restricting a physician's right to practice medicine void, the law contains an exception permitting enforcement where the physician agrees to pay damages for terminating the agreement if the damages are reasonably related to the injury suffered because of the agreement's termination. (Colo. Rev. Stat. Ann. § 8-2-113(5)(a); 7 Colo. Code Regs. § 1103-14:1(G)). Applying that exception to a doctor's non-compete, a Colorado appellate court held that a contractual liquidated damages provision was unenforceable because the liquidated damages were not reasonably related to the injury actually suffered by the medical worker's employer (*Crocker v. Greater Colo. Anesthesia, P.C.*, 463 P.3d 860, 865-66 (Col. Ct. App. 2018)).

Delaware has adopted a similar approach. Under Delaware law, non-competes between or among physicians restricting the physician's right to practice medicine in a particular location or for a defined period of time after termination of the agreement are void. However, Delaware law contains an exception to the blanket ban allowing for the enforcement of a reasonable liquidated damages provision. Specifically,

it provides that "all other provisions of such [an employment, partnership, or corporate] agreement shall be enforceable at law, including provisions which require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the principal agreement. Provisions which require the payment of damages upon termination of the principal agreement may include, but not be limited to, damages related to competition." (6 Del. Code Ann. § 2707.)

Arizona also applies a reasonableness requirement for liquidated damages provisions under common law. For example, in *Tortolita Veterinary Servs., PC v. Rodden*, the court held that liquidated damage provisions in veterinarians' non-competes may be enforceable if they:

- Are intended to compensate the non-breaching party, rather than penalize the breaching party.
- Approximate either the loss anticipated at the time of contract creation or the loss that actually resulted.

(498 P.3d 125, 129-132 (Ariz. Ct. App. 2021).)

Generally Applicable Non-Compete Statutes

In recent years, states have increasingly passed laws that limit or restrict the use of non-competes, and sometimes other restrictive covenants, such as non-solicits and non-treatment agreements. In those states without a specific health care statute, the non-compete laws generally govern non-competes with health care workers. Several states have enacted laws invalidating non-competes for certain workers or imposing other requirements on the enforceability of non-competes by, for example:

- Setting a maximum duration for non-competes.
- Invalidating non-competes for employees or contractors who earn less than a specified minimum annual compensation threshold.
- Imposing notice requirements, such as requiring that the non-compete be disclosed to the employee before employment begins or at least 14 days in advance of signature.
- Requiring that compensation be paid during the non-compete period.
- Requiring that the employer advise the employee of their right to consult with an attorney before signing the non-compete agreement.

For a 50-state comparison of general non-compete laws, see Quick Compare Chart, State Non-Compete Laws.

Common Law Reasonableness Analysis

In states without any non-compete statute, courts typically apply a common law analysis to determine the enforceability of non-competes. While the analysis starts with the premise that non-competes are generally disfavored, the courts generally will enforce non-competes if they are narrowly tailored and reasonably necessary to protect an employer's legitimate business interest without unduly restricting an employee's ability to earn a living or harming the public interest.

Courts have applied these principles when determining the enforceability of physician non-competes in common law jurisdictions (see, for example, *Glascock v. Covenant Med. Ctr. Inc.*, 2022 WL 2824734, at *2-3 (Iowa Ct. App. July 20, 2022) (enforcing a 25-mile, 18-month non-compete against bariatric surgeon); *MetroHealth Sys. v. Khandelwal*, 183 N.E.3d 590, 596 (Ohio App. 8th Dist. 2022) (modifying and enforcing as modified a two-year, 35-mile non-compete against burn surgeon and director of burn center); *Weber v. Tillman*, 913 P.2d 84, 89-90 (Kan. 1996) (physician non-competes in employment contracts are enforceable if they are reasonable and not adverse to the public welfare)).

Courts often find that a medical practice's relationships with its existing patients constitute legitimate business interests that are worthy of protection (see, for example, *Ansaarie v. First Coastal Cardiovascular Inst., P.A.*, 252 So. 3d 287, 291-92 (Fla. 1st DCA 2018) (enforcing a five-mile, two-year non-compete prohibiting doctor from providing or soliciting competing cardiovascular services); *Surgery Ctr. Hldgs., Inc. v. Guirguis*, 318 So.3d 1274, 1280-81 (Fla. 2d DCA 2021) (holding that patient goodwill within a 25-mile radius was a legitimate business interest warranting enforcement of two-year non-solicitation provisions against departing physicians); *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 613 (Mo. 2006) (finding

patients were a protectable interest and enforcing non-compete against home health care provider)). Courts also have held that hospitals have a legitimate interest in protecting confidential business information, such as patient and patient referral lists, and investment in physician training (*The Community Hosp. Grp., Inc. v. More*, 869 A.2d 884, 897 (N.J. 2005) (enforcing physician non-compete, as modified to reduce the geographic scope)).

Some courts have held that while physician non-competes are not per se unenforceable, they must be strictly construed because of strong public policy and ethical considerations, and subject physician non-competes to stricter scrutiny than employee non-competes in the commercial context (see, for example, *Valley Med. Specialists v. Farber*, 982 P.2d 1277, 1283 (Ariz. 1999) (holding "the doctor-patient relationship is special and entitled to unique protection" and finding pulmonologist's three-year non-compete for practicing medicine unenforceable)).

Non-Treatment Agreements

Non-treatment agreements are another form of restriction imposed on health care practitioners' professional activities. Non-treatment agreements can either be stand-alone agreements or, more commonly, provisions within non-compete agreements. They differ from non-solicitation agreements because they prevent health care professionals from treating a former patient even if the patient requests continued treatment from that professional. Some states:

- Disfavor non-treatment provisions as a matter of public policy. For example, the Arizona Supreme Court held that a non-treatment clause prohibiting a physician from providing medical care or assistance to former patients for three years within five miles of any of the employer's offices was not reasonable. The court stated that, among other things, a patient's right to see the doctor of their choice is entitled to substantial protection and that the covenant violates public policy because of the sensitive and personal nature of the doctor-patient relationship. (*Valley Med. Specialists v. Farber*, 982 P.2d 1277, 1285 (Ariz. 1999).)
- Prohibit non-treatment provisions for certain types of patients. For example, Texas law requires restrictive covenants to provide that a physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated (Tex. Bus. & Com. Code Ann. § 15.50(b)(3)).

Ethical Concerns With Physician Non-Competes

In addition to the challenges of enforcing non-competes generally, imposing non-compete restrictions on physicians may also raise ethical issues for practitioners. According to an ethics opinion of the American Medical Association (AMA), non-competes "restrict competition, can disrupt continuity of care, and may limit access to care." The opinion states that physicians should not enter into contracts that:

- Unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specified geographic area on termination of a contractual relationship.
- Do not make reasonable accommodations for patients' choice of physician.

It further provides that employers should not ask physicians-in-training to sign non-competes "as a condition of entry into any residency or fellowship program." (AMA Code of Medical Ethics Op. 11.2.3.1.)

While the AMA ethics opinion may raise legitimate concerns about health care non-competes, it merely discourages, but does not prohibit, these agreements. Although a court may consider the opinion as a factor when balancing the equities, the AMA ethics opinion is not legally binding on a court tasked with deciding a contract dispute. Most courts addressing the issue have not found that the opinion (or its predecessor versions) renders physician non-competes per se void (see, for example, *Mohanty v. St. John Heart Clinic, S.C.*, 866 N.E.2d 85, 94 (Ill. 2006) (AMA opinion discouraging but not prohibiting restrictive covenants in physician employment contracts is not the equivalent of a statute or rule of professional conduct, and does not render physician non-competes void per se); see also *Skaf v. Wy. Cardiopulmonary Servs., P.C.*, 495 P.3d 887, 897 (Wyo. 2021) (decided before the state's statutory ban, court found that nothing in the AMA opinion renders physician non-competes per se void)).

At least one court has relied on the AMA ethics opinion in concluding that most physician non-competes violate public policy (*Murfreesboro*

Med. Clinic, P.A. v. Udom, 166 S.W.3d 674 (Tenn. 2005)). However, that case has been superseded by Tennessee's health care non-compete statute, allowing physician non-competes under certain circumstances (see State Statutes Limiting Health Care Non-Competes).

Other Considerations Regarding Health Care Non-Competes

Health Care Deserts

The use and enforcement of non-competes with health care professionals is further complicated when they operate to restrict a physician's ability to provide services in a health care desert. Health care deserts (or medical deserts) are areas where access to health care services is limited. Patients may be unable to access the care they need or experience long wait times between the request for an appointment and a consultation with a physician. This may be explained by any number of factors, such as:

- Scarcity of health professionals, particularly specialists, in a region.
- Limited health care facilities.
- Disproportionately high costs of access.

A court tasked with determining the enforceability of a health care non-compete within a health care desert may consider public policy arguments regarding the effect, if any, of a non-compete on patients' access to medical care. For example, in *Aesthetic Facial & Ocular Plastic Surgery Ctr., P.A. v. Zaldivar*, the court held that a non-compete restricting a physician's practice of a sub-specialty of oculo-facial surgery was unenforceable as against public policy (826 S.E.2d 723, 728-30 (N.C. Ct. App. 2019)).

In reaching this conclusion, the court determined the risk presented by a physician non-compete to the public by considering:

- The shortage of specialists in the field in the restricted area.
- The impact of establishing a monopoly in the area, including fees and availability of doctors for emergencies.
- The public interest in having a choice in selection of physician.

(*Aesthetic Facial*, 826 S.E.2d at 727.)

Telemedicine

E-commerce has made geographical boundaries less relevant for many businesses, including health care practices engaged in telemedicine. Telemedicine enables health care practitioners to provide diagnostic, treatment, and monitoring services to their patients remotely. Telemedicine often allows patients to connect with physicians and other health care providers beyond the area or state where the patients reside. It therefore can provide greater access to treatment and services for individuals in health care deserts, such as rural or other traditionally underserved areas. (For more information, see Practice Note, Telehealth: Overview.)

The use of telemedicine expanded dramatically during the COVID-19 pandemic and continues in the post-pandemic environment. Physicians engaged in telemedicine may treat patients over a broader geographic area (potentially in multiple states) than in traditional medical practice. This in turn raises practical and policy considerations when assessing the enforceability of non-competes, especially regarding the reasonableness of a covenant's geographic scope and the application of appropriate state law.

Employers and others drafting non-compete, non-solicit, and non-treatment agreements for health care professionals should consider the possibility that workers subject to those restrictions provide competitive services via telecommunication, rather than in person. For example, imagine a doctor who resigned from a position treating patients in person at a Virginia medical practice and is subject to a post-employment non-compete that prevents the doctor from working for a competing practice or soliciting former patients within a designated region of Virginia. If the doctor lives in Maryland, it is unclear whether providing telehealth services from Maryland to patients in Virginia would violate the non-compete agreement.

While there is little case law addressing the location of a telemedicine practice in the context of non-competes, guidance from medical regulatory boards in the context of licensing requirements suggest that the location of the patient, rather than the physician, is likely to be controlling (for more information, see Practice Note, Telehealth: Overview). For example, the Virginia Board of Medicine states: "The practice of medicine occurs where the patient is located at the time telemedicine services are used, and

insurers may issue reimbursements based on where the practitioner is located. Therefore, a practitioner must be licensed by, or under the jurisdiction of, the regulatory board of the state where the patient is located and the state where the practitioner is located." (See Virginia Board of Medicine Telemedicine Guidance document 85-12 (revised June 24, 2021 and effective August 19, 2021.)

For a 50-state comparison of licensing requirements for telemedicine providers, see State Telehealth Requirements for Private Payors Chart.

Another wrinkle to consider is the degree to which a telemedicine health care company can enter into a reasonable non-compete or non-solicit with a physician who treats patients remotely over a broad geographic area. While the health care provider may have a legitimate business interest in restricting the physician from practicing anywhere they treated patients, depending on the size and locations of the company's roster of patients, a multi-state or nationwide restriction may be overly broad and unenforceable if realistically it prevents the physician from practicing medicine.

Staffing Agencies

Many hospital health care workers, such as nurses, anesthesiologists, and radiologists, are employed by employment or staffing agencies. Those workers commonly enter into contracts with the staffing agencies that restrict them for some period of time after the agencies' contract terminates from working for the agencies' clients (that is, the hospital or other institution where the worker actually performs medical services) or for other competing agencies. Medical staffing agencies also often enter into agreements with hospitals and other client institutions prohibiting the institutions from directly hiring those workers for a specified time period following the termination of their employment with the agencies or their assignment with the client institutions.

Some state statutes prohibit or limit the agencies from entering into these agreements. For example, Iowa has a worker-friendly statute prohibiting health care employment agencies from entering into a contract with an agency worker or health care entity that:

- Restricts employment opportunities of an agency worker by including a non-compete provision.
- Requires the payment of liquidated damages, employment fees, or other compensation if the health care entity later hires an agency worker as a permanent employee.

(Iowa Code Ann. § 135Q.2(3).)

Kentucky has a similar statute regarding temporary direct care staff, and prohibits health care services agencies from:

- Restricting employment opportunities of an agency employee, including by using contractual non-competes or buyout clauses.
- Requiring the payment of liquidated damages, employment fees, or other compensation if the institution where the agency employee worked later hires them as a permanent employee of the institution.

(KRS 216.724.)

Courts also have grappled with the issues raised by medical staffing agency non-competes. For example, in *St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse, P.C.*, the plaintiff hospital sued staffing companies that had placed their anesthesiologist and nurse anesthetist employees at the hospital. The hospital and staffing companies had entered into an agreement that prohibited the hospital for two years after the agreement terminated from soliciting employees or taking action to cause employees to end employment with staffing companies. The staffing companies also had entered into non-competes with their employees. The hospital terminated the agreement and extended employment offers to many staffing company employees, claiming it could not hire enough anesthesiologists without doing so. The hospital sued the staffing companies and claimed they engaged in antitrust violations (unreasonable restraint of trade and unlawful monopolization). The staffing companies counterclaimed for breach of contract. In denying the staffing companies' motion to dismiss the antitrust claims, the court advised the parties that non-competes and non-solicits would be carefully scrutinized and that public policy favors access to medical professionals. (*St. Joseph's*, 2024 WL 4930688, at *3-6 (N.D.N.Y. December 2, 2024); see also *Magtoles v. United Staffing Registry, Inc.*, 665 F. Supp. 3d 326, 347-49 (E.D.N.Y. 2023) (refusing to enforce staffing company's nationwide non-compete with nurses, noting that it would be "plainly harmful to the general public if dozens of licensed nurses and practitioners

were prohibited from contributing their services to an industry as valuable and important as nursing").)

For state law requirements on non-competes and staffing agencies, see Quick Compare Chart, State Temporary Care Staffing Agency Laws.

Applications for Injunctive Relief

Non-compete litigation often involves applications to courts for injunctive relief, such as a temporary restraining order (TRO) or preliminary injunction (PI). Among the factors considered by the courts in granting or denying the requested relief is a balancing of the equities, namely, the harm to the employer if the court denies the relief weighed against the harm to the employees or the general public if the court grants it. In the case of health care non-competes the public harm may be significant, especially in health care deserts and other less populated areas, because the court's order may impact patient choice and health care access.

For example, the parties seeking enforcement of restrictive covenants may seek a TRO or PI directing the medical professionals not to engage in the practice of medicine or a given specialty within a defined geographic region. This in turn may prevent medical professionals from:

- Working for competitors or opening a new practice in the area.
- Soliciting their former patients.
- Treating their former patients and therefore disrupting continuity of care.

Conversely, health care providers have legitimate business interests in protecting:

- Confidential patient information.
- Business plans.
- Investments in training junior practitioners.
- Access to a patient pool.

Many factors impact courts' decisions on applications for equitable relief involving health care non-competes. As with other non-competes, these determinations involve a fact-specific analysis. Courts may be more hesitant to grant injunctive relief regarding health care non-competes given the possible effects on patients' access to adequate health care, including specialty care, and patients' ability to see the medical professionals they choose.

For more resources on injunctive relief generally, see Injunctive Relief Toolkit (Federal).

Best Practices for Using and Enforcing Health Care Non-Competes

For health care professionals and the companies or partnerships that employ them, there are particular regulatory and policy issues that may affect the enforceability of health care non-competes. These concerns apply to non-competes entered into in connection with the purchase or sale of a medical practice, although these situations are often addressed by statute. The applicable laws vary widely across jurisdictions and are changing rapidly.

As suggested best practices, health care providers and their counsel should:

- Continue to monitor changes in federal and state law that may affect health care non-competes, including changes to general non-compete laws in jurisdictions where health care non-competes are not specifically regulated, and consult with counsel for the latest developments.
- Implement annual reviews of health care non-competes to consider their continuing enforceability, and revise, replace, or revoke the non-competes as appropriate.
- Consider alternative protections for confidential information. Patient lists and other information can be protected as trade secrets or confidential information if the employer takes sufficient measures to preserve confidentiality, such as by:
  - using confidentiality and nondisclosure agreements (NDAs);
  - securing electronic information by password protection and encryption.
  - storing hard copy files in locked drawers; and
  - restricting employee access to confidential information to a limited pool of employees (on a need-to-know basis).

If considering litigation to enforce a health care non-compete, counsel should be sure to gather evidence, strategize, and realistically assess their chance of success before proceeding.

For more on litigating restrictive covenant and trade secret cases, see Practice Notes:

- Preparing for Non-Compete Litigation.
- Trade Secrets Litigation.
- Employment Litigation: DTSA Claims.