Physician Employment Agreements: How to Think about the Restrictive Covenant

Jeffrey Segal, M.D., J.D.

When a physician signs an employment agreement, it sets the stage for expectations for that employment.

Buried in the legalese is language that addresses what happens if things don't work out. How can the employer terminate the employment, for cause or no cause? How can the employee leave, for cause or no cause? What are the trailing obligations?

With a non-compete agreement, you may be forced to leave the community. To start over in a distant locale. To sell your house in a down market. To remove your kids from their high school with one year to go before graduation. To ask your spouse to quit her current well-paying job and start over in a new community. A non-compete agreement often invites disruption and chaos.

Yet, an employer may have a legitimate business interest worthy of protection. Imagine the small-practice owner spending a fortune recruiting a new physician employee. He then spends even more money getting him set up. He introduces the recruit to all referral sources. He gives this employee patients to set him up for success. He promises that this employee will be an equity partner in two years. All the recruit has to do is show up and do a satisfactory job. Then, one year later, that employee leaves. He sets up a practice across the hall. He starts bad-mouthing his former employer. The employer laments, "I don't understand. I treated him like a son. Such disrespect." Not only did he lose his investment. His loss may be even worse than if he had made no effort at recruitment. His core business is now at risk.

Each side has a point.

The purpose of this article is to dissect physician non-compete agreements—what they are, why practices cling to them, why doctors lose sleep over them, and how federal and state rules color the battlefield. It will flag drafting principles that stand a fighting chance in jurisdictions that tolerate these clauses, and survey statutory land mines in four prominent states. Finally, it will consider patient non-solicitation promises, an under-appreciated cousin of the classic non-compete.

Non-Compete vs. Restrictive Covenant: Same Family, Different Branches

Lawyers bundle a variety of post-employment restraints under the heading "restrictive covenants." The genus includes:

- **Non-competition clauses:** These ban practicing in a defined geographic area or for a defined period after departure (for example within 25-mile radius from any office location for the employer, for, say, two years).
- **Non-solicitation clauses:** These bar poaching patients, referral sources, or staff.
- **No-hire / no-raiding clauses:** These prohibit hiring away colleagues.
- **Confidentiality clauses:** These forbid disclosure of proprietary information (e.g., EMR templates, marketing strategy, payer rate sheets).

A non-compete focuses on location and time; a restrictive covenant is the broader umbrella. Smart contracts label each promise precisely. Sloppy contracts call everything a "non-compete," which invites confusion—and, occasionally, judicial scalpels that slice away the entire section.

Why Employers Insist, and Why Doctors Bristle

Employers need to protect their investment. Recruiting, credentialing, and marketing a surgeon, for example, can cost six figures before the first suture. Practices fear an associate who learns the playbook, then walks across the street. Patient panels, referral pipelines, and payer relationships constitute an intangible asset. Buyers of physician groups often peg enterprise value to that goodwill. Remaining partners also need stability. If three partners subsidize a new electrophysiologist's ramp-up, they want assurance that the rising tide doesn't row away with the boat.

Employees have good reasons for concern. Medicine prizes continuity: non-competes can force abrupt hand-offs or compel patients to travel long distances. Geographic restraints land hardest on physicians with school-aged kids or spouse careers tethered to a city. Recruits face a bargaining-leverage imbalance. If they do not say yes, someone else probably will. As antitrust agencies increasingly realize, broad non-competes are a wage suppression mechanism, especially in markets with limited provider options.

Federal Oversight: the FTC's Whiplash Year

On Apr 23, 2024, the Federal Trade Commission (FTC) published a Final Rule[1] classifying most post-employment non-competes as an "unfair method of competition." The rule would have voided existing covenants for 99 percent of workers and banned new ones, exempting only senior executives with existing non-competes. Employers would even be banned from entering into or attempting to enforce any new non-competes, even if they involve senior executives. And employers would be required to provide notice to workers other than senior executives who are bound by an existing non-compete that they will not be enforcing any non-competes against them.

Litigation erupted within weeks. A Northern District of Texas judge paused enforcement on July 3, 2024.[2] A Philadelphia judge upheld the rule three weeks later. Then, on Aug 20, 2024, the same Texas court struck the ban, declaring the FTC lacked rule-making authority of such breadth.[3] Appeals ping-ponged through 2025. As of the date this article was written, the Fifth Circuit has not issued a final merits decision, and the Supreme Court has not granted certiorari. In short, no nationwide ban exists today, but many employers have mothballed aggressive non-competes out of caution.

Congress has dabbled—most recently with the Workforce Mobility Act of 2025.[4] The text of that bill would prohibit employers from entering into, enforcing, or threatening to enforce non-compete agreements. Non-compete clauses would only be permitted in limited circumstances, specifically regarding the sale of a business entity or the dissolution/dissociation of a partnership. Employers would be forced to post notices informing employees and potential employees of the limitations on non-competes. As of the date this article was published, that bill has not advanced beyond committee.

The takeaway: Unless and until the appellate dust settles, non-competition law remains a state-by-state affair, moderated by local public-policy exceptions and common-law reasonableness tests. Federal law is not controlling.

Drafting Principles Where Non-Competes Survive Scrutiny

State courts that tolerate non-competes still demand a Goldilocks approach—neither too hot nor too cold. Contract drafters need to consider the following principles:

- **Legitimate interest:** Tie the restraint to protection of proprietary information, specialty training, or goodwill—not naked suppression of competition.
- **Reasonable time:** Most states frown on periods beyond two years; some permit carve-outs for longer if tied to partnership buy-outs or sale of a practice.
- **Reasonable geography:** A high-density urban setting may justify three miles; rural cardiology might justify 20 miles. Anchor the radius to actual patient draw, not a dartboard.
- **Buy-out option:** Texas requires this for physicians; several states view a buy-out as evidence of reasonableness. Set an objective formula (e.g., trailing-twelve-month collections × X percent).
- **Access to medical records:** Even when a doctor departs, HIPAA and continuity-of-care duties persist. Contracts should guarantee the departing physician timely copies of medical records, at reasonable cost. Patients should not be held hostage.
- **Tailored scope of practice:** Only the subspecialty that was subsidized should be included, not every conceivable line of business.
- **No-patient-harm clause:** Some agreements carve out emergencies or indigent care inside the radius, protecting community access and insulating the clause from public-policy attack.

State Spotlights

California

Virtually every post-employment non-compete or patient-nonsolicit is void. Employers who require them may face civil penalties. Physicians often rely on trade-secret and confidentiality clauses instead (Bus. & Prof. Code § 16600 and 2023 amendments in SB 699 & AB 1076).

Employers can safely protect their interests, such as goodwill, through retention bonuses, long notice periods, and liquidated-damage buy-outs pegged to recruiting costs rather than to outright geographic bans.

Texas

In 2025, SB 1318 updated the criteria for enforceable non-compete agreements with physicians. It also clarified that the practice of medicine does not include managing or directing medical services in an administrative capacity for a medical practice or other healthcare practitioner.[5]

- **Geographic scope restriction:** Non-compete agreements must limit the restricted area to a five-mile radius from the physician's primary practice location at the time of termination.
- **Temporal limitation:** Non-compete restrictions must expire no later than one year after termination of the physician's contract or employment.
- **Buyout cap:** The buyout provision, which allows a physician to pay to be released from the non-compete, is capped at the physician's total annual salary and wages at the time of termination. This replaces the previous "reasonable price" standard and eliminates the option for arbitration to determine the buyout amount.
- **Termination without good cause:** If a physician is terminated without "good cause" (defined as a reasonable basis related to the physician's conduct, job performance, or contract record), the non-compete becomes void and unenforceable.

This new law was deemed very physician friendly. While you can't easily move across the street, you could move close by.

Massachusetts

Since 1977, Massachusetts has prohibited physician non-competes outright. The 2018 Non-Compete Act extended significant procedural hurdles to other professions but preserved the total ban for doctors (Mass. Gen. Laws ch. 112 § 12X (medical) and ch. 149 § 24L (general non-compete act).)

Florida

Courts enforce physician non-competes so long as they protect legitimate business interests and contain reasonable time constraints (two years or less usually presumed reasonable), geography, and line of business. Unlike Texas, no statutory buy-out exists, but judges may "blue-pencil"

overreaching clauses. "Blue penciling" refers to a court's legal authority to rewrite or modify an overly broad or unreasonable contract, most commonly a non-compete agreement. Instead of voiding the entire contract, a judge will use the "blue pencil" to scale back terms (like geographic scope or duration) so the agreement becomes enforceable (Fla. Stat. § 542.335).

Non-competes in Florida are void if the employer holds a functional monopoly position for a particular specialty in that county.[6]

In 2019, the Florida Legislature enacted Fla. Stat. § 542.336, which renders non-compete agreements void and unenforceable when all physicians in a particular specialty within a given county are employed or contracted by a single entity or affiliated group. This statutory limitation continues for three years after a second unaffiliated employer begins offering services in the same specialty and county.

The Northern District of Florida upheld the constitutionality of § 542.336 in *21st Century Oncology, Inc. v. Moody*, 2019 WL 3948099 (N.D. Fla. Aug. 21, 2019), affirming the law's public policy rationale—specifically, ensuring access to medical care and preventing de facto monopolies in physician services.

The court emphasized that the statute is triggered based on objective market conditions—whether a single employer dominates a specialty in a given county—regardless of the judicial forum. The court also accepted its retroactive application, holding that § 542.336 could invalidate a previously enforceable non-compete when monopoly conditions later emerged.

Conversely, when no monopoly situation is presented, courts have upheld the enforceability of non-competes against physicians. Courts have consistently applied these statutes, regardless of the district in which a case has been filed.

Patient Non-Solicitation: a Quieter—but Potent—Covenant

Employers treat their patients as belonging to them. They would ideally prefer to prevent the now departed physician from rekindling his prior patient-physician relationships.

California

Non-solicitation of patients runs into trouble after the 2008 *Edwards v. Arthur Andersen*[7] decision, which invalidated a client-nonsolicit despite its narrow drafting. Post-*Edwards,* any restraint that prevents a former employee from "do[ing] business with anyone" is void. Patient-nonsolicits fall squarely within that prohibition. One workaround is a confidentiality clause that bars use of the practice's proprietary patient list—yet allows patients, of their own volition, to follow the doctor.

Massachusetts

Per *Miele v. Foundation Medicine, Inc.*,[8] non-solicitation may still be allowed as a viable option.

In 2017, Foundation Medicine, Inc. (FMI), hired Susan Miele, who, as a condition of employment, signed a "NonCompetition, Non-Solicitation, Confidentiality and Assignment Agreement" (restrictive covenant agreement). That agreement included a nonsolicitation provision barring Miele—during her employment and for one year thereafter—from "directly or indirectly...solicit[ing], entic[ing] or attempt[ing] to persuade any other employee or consultant of [FMI] to leave the services of [FMI] for any reason" or otherwise participating in or facilitating his or her hire by Miele's subsequent employer.

In 2021, following her departure from FMI, Miele joined Ginkgo Bioworks (Ginkgo). FMI alleges that during the one-year period following her departure from FMI, Miele subsequently recruited several then-current FMI employees to work at Ginkgo. FMI subsequently notified Miele of her alleged breach of the agreement.

Under the plain language of the Massachusetts Noncompetition Agreement Act, noncompetition agreements do not include nonsolicitation agreements, and forfeiture for competition agreements are a subset of noncompetition agreements. G. L. c. 149, § 24L (a) states: "Noncompetition agreements include forfeiture for competition agreements, but do not include . . . covenants not to solicit or hire employees of the employer." (A forfeiture for competition agreement is a financial penalty for breaching a restrictive covenant, for example, taking away severance pay, deferred compensation, and stock options.)

While *Miele v. Foundation Medicine, Inc.* addressed non-solicitation of employees, it is possible that non-solicitation of prior patients would follow the same analysis. This means that a departing employee may be able to solicit his former patients.

Seven Tactical Tips for Physicians to Consider Before Signing

- **Map your real referral radius.** Pull zip-code analytics from your EMRs; use data, not guesswork, when negotiating mileage.
- **Ask for a buy-out formula today.** Tomorrow's ambiguity translates to leverage for the party with deeper pockets. In Texas, for example, per the Business and Commerce Code Section 15.50, your buyout price cannot exceed 100% of your total annual salary and wages as of your termination date. (That's still a large number, so negotiating that on the way in will be easier than seeking grace on the way out.)
- **Insist on a "no poison-pill" clause.** If the practice terminates you without cause, the non-compete evaporates.
- **Limit scope by specialty.** An orthopedic hand surgeon should not be barred from moonlighting in urgent care.
- **Align non-solicitation with HIPAA.** An employer cannot keep a patient from requesting records; it can prevent blast emails.
- **Assure post-termination EMR access.** Specify the method, cost, and timeline for chart retrieval.

How Physicians Can Still Earn a Living Without Moving

Some tactics may still enable gainful employment even with a viable non-compete in place.

1. **Telemedicine.** Generally, the patient-physician relationship takes place where the patient is accessing his computer. That is why if your patient lives in another state, you need to have a license in that other state to diagnose or treat him, and you must follow that other state's telemedicine rules. Telemedicine may be reasonable no matter where you work. A proper analysis would depend upon where the *patient* lives, an analysis which would not be practical for the former employer.
2. **Temporarily work for the Veterans Administration, Indian Health Services, or Federally Qualified Health Center (FQHC).** Arguably, such institutions do not compete with your former employer. From a practical perspective, their patients are captive to the federal institution. Of course, there may be exceptions. A patient seen by the VA can still pay cash for services with the former employer. Or the VA may outsource some services to a private practice.
3. **Review the agreement for scope.** If your former employer only provided coverage for six specialties, and the agreement mandates against "any practice of medicine," that restriction is arguably too broad.

Automatic Contract Renewals

Restrictive covenants are increasingly disfavored based on the facts, even when otherwise allowed in principle.

To illustrate, in North Carolina, consideration is required in exchange for a non-compete provision. The job offer itself serves as sufficient consideration *at the beginning*. If an employer wants to add a non-compete down the road for an existing employee, it would be necessary to offer *additional* consideration, such as money, or additional paid time off.

Sometimes the other details of an employment agreement will render a non-compete provision as void, even though when read alone, the provision should have been enforceable.[9]

On June 26, 2017, in the case of *American Air Filter Company, Inc. v. Samuel C. Price, Jr., and Camfil USA, Inc.*, the North Carolina Business Court dismissed, without prejudice, a company's claim of breach of a non-competition covenant against a former employee in North Carolina.

In 2006, the employment agreement at issue was entered into 17 years after the employee started working. Importantly, the employment agreement contained a very common automatic renewal provision (sometimes called an "evergreen" provision) that stated that the agreement would automatically renew from year to year. In ruling on the employee's motion to dismiss, the Business Court found the company adequately alleged that it provided the employee with sufficient additional consideration for the agreement when it was signed. However, because the Company did not allege that the employee received new consideration for *each of the subsequent automatic renewal terms*, the Business Court concluded that there was no legal consideration alleged in the complaint to support the non-competition covenant after the first year of the term expired.

On that basis, and without citing to any precedent for this specific point, the court concluded that the agreement, including its covenant not to compete, was unenforceable as to the years subsequent to the initial term. Thus, the Court held that an employer's failure to allege that it provided additional consideration for an employment agreement's renewal "breaks the chain" of employment and renders the employment agreement unenforceable as to subsequent years.

In other words, the employment renewed annually. Each renewal was treated as a new "initial" contract. And since the employee already had a job, there was no new job offer to serve as consideration. With no new consideration, such as more pay or paid time off, as additional consideration, any non-compete provision after the first year was void. Thus, the court ruled against the employer.

Conclusion

Employment covenants can feel like boilerplate, yet they govern where a physician lives, whom they treat, and whether patients keep the doctor they trust. Read every page while you still have a chair, a pen, and leverage.

Jeffrey Segal, M.D., J.D., is founder and CEO of Medical Justice. Contact: jsegal@medicaljustice.com

REFERENCES

1. Federal Trade Commission. FTC announces rule banning noncompetes. Press Release; Apr 23, 2024. Available at: https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes. Accessed Jun 6, 2026.
2. Wiessner D. US judge partially blocks FTC ban on worker noncompete agreements. Reuters; Jul 5, 2024. Available at: https://www.reuters.com/legal/us-judge-blocks-biden-administration-ban-worker-noncompete-agreements-2024-07-03/. Accessed Jun 6, 2026.
3. Reich AL, Pramschufer EP. Texas court invalidates FTC ban on non-compete agreements. Saul Ewing; Aug 21, 2024. Available at: https://www.saul.com/insights/blog/texas-court-invalidates-ftc-ban-non-compete-agreements. Accessed Jun 7, 2026.
4. S.2031. Workforce Mobility Act of 2025. Available at: https://www.congress.gov/bill/119th-congress/senate-bill/2031/text. Accessed Jun 7, 2026.
5. Davis WL, Atlas CR. Texas SB 1318 tightens physician non-compete rules, extends restrictions to other healthcare practitioners. Jackson Lewis; Jun 26, 2025. Available at: https://www.jacksonlewis.com/insights/texas-sb-1318-tightens-physician-non-compete-rules-extends-restrictions-other-healthcare-practitioners. Accessed Jun 7, 2026.
6. Greenberg J. Physician non-compete agreements in Florida. Howell, Buchan & Strong; Jul 15,2025. Available at: https://howellbuchanandstrong.com/2025/07/physician-non-compete-agreements-in-florida/. Accessed Jul 7, 2026.
7. *Edwards v. Arthur Andersen.* 44 Cal. 4th 937 (2008).
8. *Miele v. Foundation Medicine, Inc*., 496 Mass. 171 (2025).
9. Dickinson WB. North Carolina business court decision could impact enforceability of many non-competition covenants. JDSUPRA; Aug 2, 2017. Available at: https://www.jdsupra.com/legalnews/north-carolina-business-court-decision-56898/. Accessed Jun 7, 2026.