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# **Non-compete Agreements for Health Care Workers: An Overview**

Presenters: Larry Perlman, MD, and David Sanders

## Disclaimer

- This presentation is not legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only. The information contained in or any distribution of this presentation is not intended to create, and receipt does not constitute, an attorney-client relationship.



## Choice of Law

- Delaware should not be the default.
- Focus on where the individual is located (for telehealth and brick-and-mortar).



## States Banning or Limiting Physician Non-Competes

- Arkansas
- Delaware
- Georgia
- Indiana
- Kentucky
- Massachusetts
- New Hampshire
- Rhode Island
- South Dakota
- Colorado
- New Mexico

## Most Recent Legislation

- **Arkansas** - On March 4, 2025, the governor signed a law amending the state's non-compete statute to ban physician non-compete agreements. The term "physician" includes any person authorized or licensed to practice medicine under the Arkansas Medical Practice Act and any person licensed to practice osteopathy under Arkansas law. The Act will take effect in the summer of 2025.



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**Kentucky**

- As of July 14, 2022, health care services agencies may not restrict employment through non-compete agreements.
- The law was amended on June 29, 2023, under the amendment, the statute only applies to “direct care staff that is contracted with or employed by the agency.”

- Physician non-compete agreements restricting a physician's right to practice is void as a matter of law.
- The statute provides exceptions, however, allowing physicians to:
  - Agree to damage provisions imposed if they leave the practice, and for the recovery of those damages reasonably related to the injury suffered; and
  - Disclose their new professional contact information to any existing patient with a rare disorder or a successor organization to whom the physician was providing consultation or treatment before termination of the agreement.

## Colorado (cont.) – Example Language

- Carve-Outs. Notwithstanding the foregoing, nothing herein shall restrict Employee from the following activities disclosing Employee's continuing practice of medicine and new professional contact information to any patient with a rare disorder, as defined in accordance with criteria developed by the National Organization for Rare Disorders, Inc., or a successor organization, to whom Employee was providing Clinical Services or Remote Services before termination of the Employment Period and continuing to provide Clinical Services or Remote Services or at a new employer to any such patient.



## Colorado (cont.) – Example Language

- “With respect to Sections 9(a)(ii) and 9(a)(v), the Company’s sole and exclusive remedy for any violation of the provisions in such Sections shall be the payment of damages (and not as a penalty) in an amount that is reasonably related to the injury suffered by the Company Group by reason of Employee’s (A) termination of employment pursuant to or in violation of the terms of this Agreement; plus (B) violation of those Sections 9(a)(ii) and 9(a)(v).”



## States Banning J-1 Visa Physician Non-Competes

- Idaho
- Nevada
- J-1 Visas are non-immigrant study and work-related exchange programs.



- Arizona
- Ohio

## States that Strictly Construe Non-Competes for Health Care Workers

- Courts strictly construe physician non-compete restrictions against the enforcer.
- Arizona courts strongly favor the patient's right to choose a doctor freely.
  - The Arizona Supreme Court determined that "the doctor-patient relationship is special and entitled to unique protection." *Valley Med. Specialists v. Farber*, 982 P.2d 1277, 1283 (Ariz. 1999).
- Based on *Farber*, physician non-competes should be limited to **five to 10 miles** depending on population density and location of patients.
  - In *Farber*, the Court held that the covenant not to compete between the physician and Practice was unenforceable. It noted that the Practice's protectable interests were small compared to the patients' right to see the doctor of their choice. The Court also found that the three-year duration was unreasonable; the five-mile radius was unreasonable because with the three business locations the restriction covered more than 235 square miles; the restriction was overly broad because it was not limited to the physician's specialty.
  - Best practice is to review where patients are coming from before setting geographic scope.



# States Permitting Physician Non-Competes Under Specific Conditions

- Pennsylvania
- Connecticut
- Tennessee
- Texas
- West Virginia
- Florida
- North Carolina

## Most Recent Legislation

- **Pennsylvania** – the Fair Contracting for Health Care Practitioners Act, effective January 1, 2025, bans most non-compete agreements for physicians, osteopaths, certified registered nurse anesthetists, certified registered nurse practitioners, and physician assistants.
- Among other carve-outs, the Act does not ban non-compete agreements that are one year or less and apply to a health care practitioner who voluntarily terminated their employment.

- Existing Law
  - Non-competes for physicians, APRNs, and PAs are only enforceable if the agreements are:
    - Necessary to protect a legitimate business interest;
    - Reasonably limited in time, geographic scope, and practice restrictions; and
    - Otherwise consistent with law and public policy.
  - Connecticut's statute also prohibits any restriction of more than one year or more than 15 miles from the physician's primary practice site.
- Recent Amendments
  - Agreements are unenforceable if:
    - The physician does not receive a material increase in compensation at the time of the extension or renewal of the non-compete; and
    - The non-compete expires and is not renewed by the employer; or the employment or contractual relationship is terminated by the employer, unless such employment or contractual relationship is terminated by the employer for cause.
  - Under the amendment, a non-compete can only include one site where the 15-mile restriction can be in place.

- Non-compete agreements for many health care workers are only enforceable where:
  - The agreement is signed in writing; and
  - The restriction is for a maximum of two years and the geographic restriction is:
    - Limited to a ten-mile radius of the physician's primary practice site;
    - Limited to the county of the physician's primary practice site; or
    - There is no geographic restriction, but the physician may not practice in the employer's facilities.
- The statute specifically enumerates which types of health care workers these restrictions apply to. For example, they apply to chiropractors but not physical therapists.



- Physician non-competes are only enforceable where the non-compete restriction:
  - Does not deny 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 customary patient medical records for a reasonable fee;
  - Provides a buy-out provisions for a reasonable price or as agreed by the parties; and
  - Allows the physician to continue treating specific patients or those with acute illnesses after the employment has terminated.




## Texas (cont.) – Example Language

- Carve-Outs. Notwithstanding the foregoing, nothing herein shall restrict Employee from the following, so long as Employee is licensed as a physician by the Texas Medical Board: (1) continuing to care for and treat patients with acute illnesses; and (2) accessing (A) a list of patients that Employee saw or treated in the 12 months prior to the expiration of the Employment Period and (B) a patient's medical records for a reasonable fee, provided that such patient provides his or her consent to the release of such records to Employee.
- Notwithstanding anything herein to the contrary, Employee has the option to be released from the covenants contained in Sections 9(a)(i) and 9(a)(iv) upon Employee's payment of a reasonable price to the Company (the "*Option*"). If the Parties are unable to agree upon a reasonable price, at the time Employee intends to exercise the Option, the price shall be determined by a mutually agreed upon arbitrator or, in the case of an inability to agree, an arbitrator of the court whose decision shall be binding on the Parties.
- **Practice Tip:** Practitioners generally use one year of base salary for buyout provision.

# Independent Contractors

- Be careful that restrictive covenants do not undermine 1099 status

## Misclassification of Employees as Independent Contractors Under the Fair Labor Standards Act

Are You An Employee Or An Independent Contractor?			
Indicators of an Employee		-OR-	Indicators of an Independent Contractor
	Working for someone else's business		In business for themselves
	Generally, can only earn more by working additional hours		Can increase profit through business decisions
	Typically uses the employer's materials, tools and equipment		Typically provides their own materials, tools and equipment and uses them to extend market reach
	Typically works for one employer or may be prohibited from working for others		Often works with multiple clients
	Continuing or indefinite relationship with the employer		Temporary relationship until project completed
	Employer decides how and when the work will be performed		Decides how and when they will perform the work
	Employer assigns the work to be performed		Decides what work or projects they will take on
<p><small>These are general concepts. All relevant facts about the work relationship should be considered as a whole, and the existence or absence of any particular fact does not require a particular outcome.</small></p>			



## States With General Employment-Based Non-Compete Bans

- California
- Minnesota
- North Dakota
- Oklahoma
  
- Montana: it's complicated



## States with General Employment-Based Non-Compete Income Thresholds as of 2025: Some States Change Annually or Less Periodically

- Colorado (\$127,091)
- Illinois (\$75,000)
- Maine (\$62,600)
- Maryland (\$22.50 hourly or \$46,800 annually)
- Massachusetts (FLSA non-exempt)
- Nevada (paid solely on an hourly wage basis, exclusive of tips or gratuities)
- New Hampshire (\$14.50 per hour or tipped minimum wage)
- Oregon (\$116,427)
- Rhode Island (\$39,125 or FLSA non-exempt)
- Virginia (\$76,081.20)
- Washington (\$123,394.17 and for independent contractors \$308,485.43)
- Washington D.C. (\$158,364 and for medical specialists \$263,939)



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## Thank You! Contact Us



**David Sanders**  
Partner | Washington, D.C.  
Transactions  
Foley & Lardner, LLP

**T: 202.295.4020**  
**E: [dsanders@foley.com](mailto:dsanders@foley.com)**



**Larry Perlman, MD**  
Partner | New York  
Labor & Employment  
Foley & Lardner, LLP

**T: 212.338.3482**  
**E: [lperlman@foley.com](mailto:lperlman@foley.com)**



**Jack FitzGerald**  
Associate | Milwaukee  
Labor & Employment  
Foley & Lardner, LLP

**T: 414.297.5079**  
**E: [jfitzgerald@foley.com](mailto:jfitzgerald@foley.com)**