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Physician Non-Compete Agreements – Changes on the Horizon?

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Non-compete covenants have become a standard component in physician employment agreements. Hospitals and private practices view these non-competes as an essential tool to protect their investment in their business and their patient base. On the other hand, physicians desire not to limit their ability to seek future employment or start their own practices.

Non-compete restrictions are common in the health care setting and are often the most fiercely negotiated component of the contract. The two most negotiated points include the length of time a physician is restricted from practicing and the geographic scope of that restriction. A physician who breaches a non-compete agreement may be responsible for significant damages to the employer or for a pre-determined amount set forth in the physician's contract.

Law regarding non-compete agreements currently varies by state. In Michigan, like the majority of other states, non-compete agreements are enforceable against physicians when the employer is protecting a reasonable business interest and the restriction imposed is reasonable in duration, geographic scope, and type of practice. If the terms of the non-compete are unreasonable, a court has discretion to reform the agreement to what is reasonable under the facts and circumstances.

Some patient advocates and state legislatures are having a broader discussion about whether such agreements are in the best interest of patients. This has led to increased speculation that the regulation of non-compete provisions may be on the horizon.

Some states, such as California, significantly limit non-compete restrictions on employees. President Joe Biden has communicated that he is opposed to non-compete agreements depriving workers from the freedom to find new employment or start a business in their line of work. In fact, on his campaign trail, President Biden reiterated the Obama-Biden plan to eliminate non-competes "Biden will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements."[1] To effectuate a nationwide ban of non-competes, Biden would need to impose highly controversial executive action or rely on new federal legislation or regulation, the latter likely by the Federal Trade Commission. Such actions may be lower priority in the near future as compared to vaccine distribution, economic recovery, and other legislative objectives.

[1] See https://joebiden.com/empowerworkers/

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For now, reasonable non-compete agreements remain enforceable in the health care industry in Michigan. Nonetheless, hospitals, medical practices and other employers should remain vigilant and aware of potential developments in this area to ensure that their employment agreements remain legal and enforceable. Consideration should also be given to current forms of agreements and to potentially incorporating or updating various provisions, including non-solicitation (of both employees and patients) and non-disparagement provisions, which are often related and support the intent behind the non-compete provisions.

Health care employers and medical professionals that are interested in having their employment agreements and non-compete agreements reviewed should feel free to contact any member of **Bodman's Health Care Law Group** or **Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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