Non-Compete Agreements: Are They Enforceable in Contracts for Medical Services?

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Yes, but with caveats. For non-compete agreements in Arkansas, there are separate rules for non-medical and medical employees. This variance stems from Arkansas' non-compete statute, which applies to non-medical employees, but expressly does not apply to medical employees. Ark. Code Ann. § 4-75-101(j)(2).

This carve-out is relatively new and there has not been a great deal of case law developing this wrinkle in the law, but there is some guidance that we can provide. First, there is no prohibition against non-compete agreements covering medical employees, but non-competes must be narrower and not drafted in a way that interferes with the public's access to the medical care provider of its choice. Because the non-compete statute expressly does not apply to non-compete agreements for medical employees, such agreements are controlled by common law. This means that there is likely no blue-penciling for these non-compete agreements, and there is no presumption that two years is a reasonable time period. This point is worthy of emphasis, because for medical employees, going even a tiny bit too far could result in a complete striking of the non-compete agreement rather than just dialing it back a bit. Arkansas common law sets a three part test for evaluating non-compete agreements: (1) the covenantee must have a valid interest to protect; (2) the geographical restrictions must not be overly broad; and (3) a reasonable time limit must be imposed. *Mercy Health Sys. of Nw. Arkansas, Inc. v. Bicak*, 2011 Ark. App. 341, 8, 383 S.W.3d 869, 874 (2011).

Looking at the case law in this area provides some helpful examples to follow. For example:

- *Mercy Health System of Northwest Arkansas, Inc. v. Bicak*, 2011 Ark. App. 341, 383 S.W.3d 869, 2011 I.E.R. Cas. (BNA) 21992 (2011) (declining to uphold non-compete provision lasting two years covering an 18 mile radius because the employer could not demonstrate sufficient interest to justify restriction and the agreement would eliminate competition and interfere with public access to physicians).
- *Jaraki v. Cardiology Assocs. of NE Arkansas, P.A.*, 75 Ark. App. 198, 55 S.W.3d 799 (2001) (declining to uphold non-compete provision barring a physician from practicing within a 75 mile radius of Jonesboro, Arkansas because the restriction included part of the Memphis metropolitan area).
- *Duffner v. Alberty*, 19 Ark. App. 137, 718 S.W.2d 111 (1986) (declining to uphold non-compete provision for orthopedic surgeon lasting one year and covering a 30 mile radius because it restricted the practice of medicine in a way that interfered with public's right to availability of surgeon).

Often clients seek firm answers from us when evaluating these issues, but because these restrictions stem from common law, we often find ourselves working within the existing law to make novel arguments and

expand the boundaries of what is permissible. While there are no easy answers here, the existing case law gives us some guidance as a jumping off point.

This article is part of the Mitchell Williams Non-Compete Agreement series explaining how non-compete agreements are interpreted and enforced. The series will be published weekly for a total of 7 articles.

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