



---

Press the print button on your browser.  
[Click here to return to the previous page.](#)

## Restrictive Covenants

### Restrictive Covenants in Physician Contracts

A restrictive covenant is a contractual provision between a physician and his or her employer which prevents the physician from practicing in a specified geographic area for a given period of time if the physician's employment terminates. Restrictive covenants (also called covenants not to compete) are primarily protective mechanisms used by employers to shield their patient bases and referral sources from competition. The covenant also serves to protect the employer's investment in a physician-employee (i.e., recruiting costs, moving expenses, opportunity costs) by encouraging the physician to remain with the employer. Restrictive covenants can benefit physicians as well. If a physician is employed by a group where all of the physicians' contracts contain covenants, none of the physicians can compete directly with the group upon leaving.

Most physician contracts include a restrictive covenant. Courts typically deem covenants valid and enforceable so long as they are reasonably tailored in terms of scope and duration to protect a legitimate business interest and are not found to restrain trade. Still, the enforceability of restrictive covenants in physician contracts has been a frequently litigated issue. Courts have struggled to balance well-established legal precedent supporting covenant enforcement in the healthcare setting with developing public policy concerns such as ensuring a physician's professional autonomy and a patient's freedom to be treated by the physician of his or her choice. In accordance with public policy concerns, two states, Delaware and Colorado, have enacted statutes specifically invalidating restrictive covenants in physician employment contracts. Moreover, CEJA Policy E-9.02 "discourages any agreement between physicians which restricts the right of a physician to practice medicine."

Many state courts employ a balancing test to determine if a restrictive covenant is reasonable and therefore enforceable. A covenant is considered reasonable if the provisions are no broader than necessary to protect a legitimate interest of the employer, are not unduly burdensome to the physician and are not harmful to the public interest. To determine if a covenant is reasonable in terms of duration and geographic scope, a number of factors are weighed, including the nature of the practice as well as the geographic and the population of the area from which it draws its patients. Restrictive covenants commonly prohibit competition from two to five or more years after employment ends. Geographic practice restrictions, however, are more varied. Urban practice areas may prohibit establishment of a practice within one mile of a former employer, while rural practice areas may restrict practices to upwards of 25 miles away. As a rule of thumb, most practices use a mileage radius that covers 80 percent of the practice's patient base as the scope of its geographic restriction. A health care attorney familiar with practice in your state and specialty can help determine a "reasonable" restrictive covenant. The AMA's Annotated Model Physician Employment Agreement is another good reference.

The "Stark II" regulations further restrain the use of restrictive covenants in the recruitment context where a hospital is providing funding. Physicians who are recruiting or being recruited should review their employment contracts with a Stark law expert.

Last updated: Mar 07, 2005  
Content provided by: Office of General Counsel

---

[Privacy Statement](#) | [Advertise with us](#)

Copyright 1995-2005 American Medical Association. All rights reserved.