



March 1, 2023

## **AAEM SUPPORTS THE FEDERAL TRADE COMMISSION (FTC) PROPOSED RULE TO BAN NONCOMPLETE CLAUSES.**

The American Academy of Emergency Medicine (AAEM) fully supports the Federal Trade Committee's (FTC) proposed rule to ban noncompete clauses and appreciates the opportunity to comment. AAEM is the specialty society for board-certified emergency physicians, representing over 8,000 members across the nation. We enthusiastically agree with the FTC that the freedom to change jobs is core to economic liberty and that noncompete clauses, particularly for hospital base physicians such as emergency physicians, hamper innovation and endanger patient safety. AAEM supports the FTC to ensure the final rule adequately ensures emergency physicians have the freedom to practice medicine in a variety of settings across the U.S. and to advocate for patient safety undeterred by restrictive noncompete clauses.

AAEM holds that noncompete clauses in emergency medicine contracts are unnecessary and inappropriate. These clauses were designed to protect business interests by preventing high-level executives and salespeople from taking one company's clients or sensitive and proprietary information to another competing company. However, these concerns do not apply to emergency medicine physicians for multiple reasons. First, emergency physicians do not have clients or private patient lists. We proudly treat every patient presenting to the emergency department regardless of the patient's status within the healthcare system. Second, the hospital or contract group provides no specialized training or proprietary information to emergency physicians. Emergency physicians do possess highly specialized information and skills; however, this specialized knowledge is obtained through rigorous study and training in medical school and emergency medicine residency programs, both of which are often paid for or subsidized by federal or state government.

In addition to serving no legitimate business purpose, noncompete clauses in emergency physician contracts hinder access to care and endanger patients.

Many U.S. hospitals, particularly critical access hospitals, are not staffed by board-certified emergency medicine specialists and instead rely on non-specialist physicians or other health care practitioners. The free flow of labor, unimpeded by noncompete clauses, is one component which would help remedy this situation, thereby provide specialty care to more Americans.

Quality patient care and safety is enhanced when hospitals have to compete for contracts. Competition is good for the consumer, who in this case, is the emergency patient. Competition is stifled when noncompete clauses held by one group or hospital bar a better or more innovative group from vying for the contract. Noncompete clauses allow inferior groups to continue providing substandard working conditions, staffing levels, and patient safety measures as competition for the physicians who provide the actual patient care is eliminated.

Finally, the combination of noncompete clauses with a lack of due process, is a powerful malignant force serving to intimidate physicians against speaking out for patient rights. The recent COVID pandemic has provided multiple examples of physicians being fired, removed from the schedule, or otherwise relegated for speaking out about patient safety issues. The goal of noncompete clauses is to intimidate the emergency physician into unquestioning servitude to business interests. Given physicians' ethical obligation to patients, many continue to speak out for patient safety; however, knowing that they can be fired at will and then forced to relocate their family to another city or state can have a chilling effect on physicians advocacy for patients.

Every patient has the right to the best emergency care provided by the best emergency physician. AAEM believes that noncompete clauses in emergency physicians contracts hinder this right, violate the intrinsic ethical values of emergency physicians, and damage the integrity of the physician-patient relationship. For these reasons, AAEM fully supports the FTC's efforts to eliminate abusive noncompete clauses, particularly in hospital-based physician contracts. We appreciate your consideration of these comments and welcome the opportunity to provide further information, examples, or insight.

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