

Illinois College of Emergency Physicians

ADVANCING EMERGENCY CARE  ICEP.org

2001 Butterfield Road, Esplanade I, Suite 320, Downers Grove, IL 60515

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April 7, 2023

Lina M. Khan
Chair U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW Washington, DC 20580

Re: Non-Compete Clause Rule Making, Matter No. P201200

Dear Chairwoman Khan,

On behalf of the 1,300 emergency physicians practicing in the state of Illinois, the Illinois College of Emergency Physicians (ICEP) encourages the FTC to finalize and enact the proposed rule categorically banning all non-compete clauses in our employment agreements.

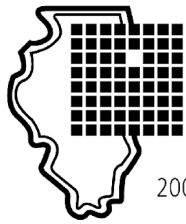
We support the commission’s proposal to categorically ban non-compete clauses and urge it to finalize the regulation as proposed to help address the current anti-competitive conditions faced by many emergency physicians that limit their ability to free practice medicine and serve their communities. These clauses have become increasingly common in our industry, and they are having a negative impact on both our ability to provide quality care to our patients and our ability to advance our careers. Non-compete clauses are anti-competition, prevent free movement of physicians to areas where our skills are needed and ultimately limit access to high quality emergency care for our patients.

The US emergency care system is the safety net that provides for all patients regardless of ability to pay. Throughout the pandemic, that system has been strained by increasing demands made on our physicians, nurses, EMTs and other healthcare providers leading to record rates of burnout and professionals leaving their professions. In 2022, post-pandemic burnout caused physician and nursing shortages across the country creating soaring needs for these professions. These issues have been further exacerbated by the prevalence of non-compete clauses in physician employment agreements. Christopher Kang, MD, FACP, President of the American College of Emergency Physicians (ACEP) notes *"Restricting an emergency physician’s ability to choose a job can stall or upend their career, contribute to workplace dissatisfaction, and accelerate currently high rates of burnout, especially in rural or underserved communities where it is already challenging to attract and retain physicians."*

Non-compete clauses limit options for employment, as they prevent emergency physicians from working for competitors or opening our own practices, therefore creating healthcare deserts without access to high quality emergency care. Physicians are often reluctant to move their families to new areas when non-compete clauses are part of the employment contracts. If the work environment is not a happy or productive one, they risk having to disrupt their

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lives to move their families to a new location due to the restrictive nature of these types of employment agreements.

These outcomes are particularly harmful in rural and underserved areas where access to medical care can be severely limited. Non-compete clauses are anti-competitive and often require that when doctors, nurses, and other medical professionals leave their jobs to leave the state or leave their profession for up to two years — even if they’re fired or don’t have their contracts renewed. In addition, these medical professionals are not even allowed to tell their patients where they’ve gone. Too many of our patients have had the unsettling experience of their trusted healthcare providers simply vanishing. Non-compete clauses and restrictive employment agreements are creating unnecessary anguish for patients in need of life saving care by forcing the movement of the physicians they know and trust.

Furthermore, non-compete clauses can hinder our ability to advance our careers and develop new skills. By limiting our options for employment, these clauses can prevent emergency physicians from seeking out new opportunities to learn and grow as medical professionals. This can have a long-term impact on their ability to provide quality care to our patients. Restrictive covenants are anti-patient, anti-worker, and bad for the future of medical innovation and treatment. Over 1,887 hospital mergers were announced between 1998 through 2021 reducing the number of hospitals by almost 25% according to a report by University of Pennsylvania. With hospital consolidation reshaping the marketplace, it is more important than ever that lawmakers step in to protect workers and consumers. Non-compete clauses are unfair, exploitative, and coercive because they can restrict emergency physician autonomy and limit otherwise viable employment options.

For these reasons, we strongly support the proposed ban on non-compete clauses for emergency doctors in Illinois. Jason A. Kegg, MD, FACEP, ICEP President, notes *“Individual physicians who have loyally practiced in a community for decades have had to sell their homes and move their families to other locations because their employers, often distant corporations, have given up their hospital contract and will not permit them to stay to work under their new “competitor.”* Everyone loses: the community who knows them, the hospital, and the individual doctor.” We believe that this ban will help ensure that patients receive the care they need, while also giving emergency doctors the freedom and flexibility to advance their careers and continue to provide high-quality medical care.

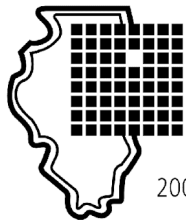
Thank you for your consideration and the opportunity to share with you. Please contact Bailey McMurray, ICEP Executive Director, at baileym@icep.org with questions.

Sincerely,

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