American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

November 3, 2025

Andrew N. Ferguson
Chair
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Request for Information Regarding Employer Noncompete Agreements

Dear Chairman Ferguson:

On behalf of the nearly 40,000 members of the American College of Emergency Physicians, thank you for the opportunity to provide our comments regarding the request for information (RFI) regarding employer noncompete agreements. Through continuing education, research, public education, and advocacy, ACEP advances emergency care on behalf of its members and the more than 150 million patients they treat on an annual basis.

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The Federal Trade Commission (henceforth referred to as "the Commission") is requesting public comment to better understand the scope, prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions.

ACEP carefully monitors the emergency medicine labor market in pursuit of our overall goal to support emergency physicians and ensure that they are treated fairly by their employer and can practice in an environment where they are able to provide the best care possible for their patients. ACEP appreciates the Commission's efforts to root out unfair and anti-competitive conditions faced by many emergency physicians that limit their right to freely practice medicine in their communities, and we are grateful for the opportunity to share our strong support for eliminating restrictive noncompete agreements in health care to strengthen our health care workforce and protect the vital patient-physician relationship.

Background

While noncompete clauses are included in contracts across employment sectors, it is important for the Commission to understand the unique qualities of the emergency medicine (EM) market. Emergency physicians serve the essential role of strengthening the health care safety net for our communities. They treat all patients who come through our doors, regardless of their insurance status or ability to pay. Emergency physicians are highly skilled workers. They go through many years of specialized medical training and are certified (or eligible to be certified) by the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM) or an equivalent international certifying body recognized by ABEM or AOBEM in Emergency Medicine or Pediatric Emergency Medicine.

Over the years, certain laws have been put into place to help protect patients and enforce the emergency health care safety net, including the Emergency Medical Treatment and Labor Act (EMTALA), which requires hospitals to provide a medical screening examination and stabilizing care to every individual who "comes to the emergency department" seeking examination or treatment. Given the vital responsibility that EM plays in our health care system, ensuring that emergency departments (EDs) across the country are appropriately staffed so they can provide

care 24 hours a day, 7 days a week, 365 days a year is essential. Hospitals and emergency medicine groups have tried to achieve this goal in different ways through different employment contracting models in which noncompete clauses have played a role, as described below.

Emergency physicians work in a variety of employment models. While some are employed directly by hospitals, many hospitals instead choose to contract with independent entities (often referred to as "groups") that themselves employ emergency physicians to provide 24/7/365 ED coverage. These independent entities range from small, independent democratic (i.e., owned by the physicians) groups that serve only one or two local hospitals, to larger groups that can staff hundreds of EDs (and sometimes service lines of other specialties) nationwide. In recent years, physician practices, including independent EM practices, have increasingly been acquired by hospitals, health systems, and corporate entities (such as private equity firms and health insurance companies) at a relatively high rate. According to a report from the Physicians Advocacy Institute (PAI), there was a sharp rise in the number of physician practices being acquired by hospitals and corporate entities throughout 2019 and 2020. Now, PAI reports that 70 percent of physicians are employed by corporate entities or hospitals—meaning that only 30 percent of physicians practice independently.

Amidst growing health care consolidation, a decrease in the number of prospective employers means that physicians often must accept the noncompete as part of their contract due to the limited amount of alternative employment options available. To gain specific information on how noncompete clauses affect emergency physicians in particular, in 2023 ACEP asked our members a series of structured and open-ended questions about their experiences with them. We asked members about how noncompete clauses affect their job search process, the limitations of their clause, and the effects of noncompete clauses on local job market competition. For respondents who identified themselves as employers/leaders of a group practice, we asked their opinions on other possible or proposed alternatives. We also asked all respondents for their general views about the labor-related impacts of noncompete clauses in emergency medicine. We received more than 75 responses to this questionnaire. The questionnaire results, including both quantitative analyses and actual anecdotal quotes directly from emergency physician respondents (all italicized), are embedded in our response to the Commission's questions and requests for comment.

The unique nature of emergency medicine can make noncompete agreements particularly ill-suited to the specialty. Unlike many other specialties, emergency physicians do not have a "book of business" of existing patients with whom they have established and ongoing relationships. If they leave to go to another group or hospital, no patients will follow them to their new practice, so their departure does not lose their previous employer any business. A number of ACEP respondents remarked on this in their comments:

> *"It makes it much harder to change jobs. Which is quite frankly ridiculous. No one chooses an Emergency Room in an emergency based on which whether a certain doctor is working. Emergency Medicine doctors do not build a patient following with patients who consider us "their doctor". We do not have an office-based practice where patients specifically choose us."*

> *"I feel limited and trapped by this clause. And it doesn't make sense. Patients don't come to the ED for me in particular. They will not follow me to a different ED and I will not ask them to do so. I can't affect where the patients decide to access an emergency room."*

> *"There is zero reason for a non-compete for emergency physicians since, unlike tech employees we don't carry specialized knowledge that competitors might benefit from, and unlike surgeons we can't take our patients with us. It's simply a means to anti-competitively suppress competition in the labor market for physicians, and it helps hospitals take a bigger cut of the fees they charge patients while paying physicians less and less and discouraging them from speaking out about quality of care concerns."*

With that context and framing in mind, our comments in response to the Commission's RFI and questions within are found below.

Q: What reason, if any, has the employer given for using noncompete agreements?

Some employers who use noncompete clauses say they choose to use them because they offer a sense of stability and workforce security. As consolidation throughout health care continues to grow, they note that a noncompete can offer a means of protection against hostile takeover of an independent ED practice wherein a contracting hospital terminates the contract but retains some members of the group:

> *"The non-compete is an attempt to protect our group from being terminated by the hospital or to at least force an acquiring competitor to negotiate with us if it desires to employ some or all of our physicians and APPs."*

"Unfortunately, there are many variations of non-competes, many of which are more restrictive than ours. I do understand the negatives of non-competes but believe that having a limited non-compete that helps protect the owners of a group from being summarily shoved out the door without any recourse is proper. The FTC needs to understand that the hospital that contracts with the ED group has significantly more power regarding the future for those physicians than does the group itself."

Q: Do the noncompete agreements harm current or former employees who take, consider taking, or would like to take new jobs? If so, how?

As shown by the following responses, noncompete clauses have caused harm and affected the ability of emergency physicians to take a new job.

"I accepted a non-compete clause in my contract because I really wanted the job, and they refused to remove it. Four years later when I changed jobs, the non-compete made it so I was unable to work locally for a 2 year period."

"…could not consider applying to any position within 35 mile or so radius of my current physical location. And won't even consider a position any more that has a non compete. It was stupid to apply that anyway to Emergency Medicine or Urgent Care providers. We had no established patients. Just walk ins."

"Noncompete clauses factored into the jobs I would consider and eliminated several options I would have otherwise been interested in. Due to my family and my children's schooling and extra-curricular activities I am limited in geographical locations and noncompete clauses severely limit my ability to accept positions I'm interested in, or potentially leave or negotiate at a job I may not be happy. It limits options severely."

"I had to leave all the other employers I had at the time to work this job that had more stability but a very strong noncompete clause. I had to weigh that decision for a long time before accepting and leaving all the other things I was doing that I wished to keep in my practice."

"I very reluctantly took a job with a noncompete clause, because I wanted to live in this area. But if I leave this job, I wouldn't be able to stay in this area."

"I preferentially choose not to apply or work in places with onerous noncompetes, especially for companies with a reputation for enforcing noncompetes. I have declined jobs in the past due to noncompetes."

"I will not work for organizations that have non-compete clauses…"

Q: Are you aware of current employees avoiding seeking or turning down new job opportunities because of the noncompete agreements? Can you provide examples?

Of respondents who identified themselves as employees/independent contractors who have had a noncompete clause in their contract in the past five years, 67.3 percent said that the noncompete clause has had a general negative impact on their employment, with 58.6 percent saying they would seek a different job locally had they not been subject to the clause. Many described feeling "trapped" by the clause:

"I now am stuck in a job where I am unhappy because if I want to leave the company, I will either need to move my family or drive an hour to other facilities. I feel trapped. This has without a doubt caused an impact on fair market value of our compensation as we have not received a raise in over 5 years and because leaving the company would cause all of the emergency physicians a hardship of moving, we all accept the bad conditions under which we are working."

"I have a noncompete clause in my contract. As I am working in an area of the country that is in dire need of emergency physicians, if I leave my current job, I would be depriving this high need area of a physician, as I would be forced to find work outside this area. Moreover, this area would be losing someone who has been actively putting down roots and becoming a member of the community, with a knowledge base of the local resources and culture."

"I turned down a job in the same town that I was living in (less than 1 mile from my house) because of a three-year noncompete clause."

"Unable to join a position I wanted due to non compete contract issues."

"I'm in the process of evaluating jobs and the presence of a non compete definitely factors into my eval of potential employees. I – and my colleagues – should be able to move jobs within a city/region without trouble. Non competes keep us potentially trapped in problematic situations if our spouse or family or other major draw to a particular area is present."

"I would have absolutely left my job much earlier if I could have taken another job locally. I feel trapped."

Geographic restrictions in noncompete clauses coerce employees into remaining in exploitative contracts that may, as one respondent noted, "censor physicians from standing up for patient care and/or leaving a facility they feel is not meeting the needs of their patients properly, without uprooting their entire family." 26 percent of respondents ultimately relocated and/or traveled over an hour for other employment due to the limitations of their noncompete clause, which can have a significant financial impact, cause familial or marriage problems, or force their entire families to readjust to a new location:

"The non compete forces me to only look for jobs that require I move my family to a new town. In essence, unless I upend my whole life and the life of my whole family I am chained to a single employer."

"It has been exhausting to work in a different city than my family lives in and puts extra strain on my family. We have decreased the number of activities we do as a family and minimized vacations, because I am gone so much that when I am not working, we just want to spend a little time together at home."

Many respondents to ACEP's questionnaire also noted how growing health care consolidation exacerbates the negative impact of noncompete clauses:

"One of the major problems with non-compete clauses is that they increase the cost of leaving your job. Employers are then able to change contracts, schedules, and working conditions knowing that it's more difficult to leave the current one. A group took over my local ER. They hired all the physicians and had non-compete clauses. Within 6 months the physician coverage was halved, and we were each covering up to 4 PAs at a time. Leaving the group meant leaving the area and most of us were unwilling to do that. The few who left were impossible to replace because of the working conditions. Administration took this as a "growing pain" with the new group. The group considered this a process working as intended. And the patient's suffered with physicians unable to protect them."

"Currently, my employment contract has a non-compete clause. It states that I cannot work for other hospitals within 5 miles of the many hospitals that my employer has contracts with. In addition, I also cannot be employed by the very same hospitals that my employer has contracts with so that I cannot switch employer and work at the same hospitals. That practically eliminates many local jobs if I stop working for the current contracting group."

"Job I was considering included geographic noncompete that prohibited any ED that 'shares more than 20% patient population.' Group staffs multiple EDs in this corner of the state, so non-compete effectively excludes ANY work in northwest Ohio or southeast Michigan if I leave the group."

Q: Are you aware of former employees moving residences, commuting significant distances, or incurring other costs to take a new job and avoid violating the terms of the noncompete agreements? Can you provide examples?

We received numerous examples from emergency physicians having to move significant distances to comply with a noncompete agreement. Some examples include:

"I recently moved away from my hometown and my wife's family due to noncompete clause. This was a very trying time for my family and my children. I had to tear them away from their school, friends, and sports. After the move my children experienced bullying at school, lack of sports options and one child developed severe anxiety requiring treatment. I then lost significant income and equity selling my house and moving back to my original location but had to accept a less desirable job due to noncompete clauses."

"I've had to start over to get out of a non-compete. People think because we make decent money we can afford to go up against hospitals and clinics but that is completely false. Even making over $100k per year I cannot take on a billion dollar health care system. So I uprooted my family and my life and had to go out of state to start over, abandoning my patients without even being able to tell them why."

"There are two hospitals within driving distance of my home for daily commuting. I worked at one hospital, and when I terminated my contract, I was unable to work at the other hospital for a two year period of time. I have had to work at another hospital three hours from my home, so I am now gone for over half of the month away from my family working."

"Living in a suburban area with a non compete clause has forced me to sell our home because a 50 mile radius for the clause made it almost impossible to find a job within 2 hours of where I live."

Q: Are you aware of former employees taking a new job and then incurring legal costs to deal with the former employer's attempts to enforce the noncompete agreements? Can you provide examples?

Some respondents to the questionnaire expressed concerns about the legal risks of violating noncompete agreements:

"I worked as an employee of a private emergency medicine group that had a contract with the hospital. My contract had a non-compete clause that prevented me from getting another local job with higher pay and better working conditions. As a result, I had to move out of my home state and got a job in another state. The move was quite disruptive, unnecessarily costly and inconvenient as my parents needed help at the time locally. I did not want to risk a law suit as I was aware of doctors getting sued and couldn't work for the new local employer. The doctor accrued costly legal expenses and couldn't work for the new employer for about a year."

"My contract stated the physician corporation would do its best effort to meet the # of shifts indicated... but also that no shifts were guaranteed. I worked zero shifts in the 6 months, and asked to be let out of the non-compete clause the physician group had with the ER management. They required me and several physicians to Pay the physician corporation $20,000 each to continue to work in the same ER where I had been for 8 years prior to their contract, and they kept me from working there for 6 months prior to requiring this "finding fee" on their exit. This group did not find me, and made me pay a fee not because of my contract, which was never honored by them, in order to continue to work in that ER."

Q. Are you aware of the employer using non-solicitation or non-recruitment agreements that limit former employees from working with the employer's former customers or former employees? Can you provide examples?

Some respondents to the questionnaire did provide examples of circumstances in which an employer used non-interference and non-solicitation clauses in their contracts. One respondent stated:

"Current contract contains both non-interference and non-solicitation clauses. Many docs unhappy with current employer but can't 'take the contract' without violating these. Had to fight before [group] took over contract to remove if group lost contract that docs couldn't stay and work for new group for the benefit of our EM residency."

Q. Have any noncompete agreements covering workers in the healthcare sector affected wages, labor mobility, or the availability, quality, or cost of healthcare services in particular? If so, how?

Of all respondents to our original questionnaire, 90 percent said that noncompete clauses make it harder for emergency physicians to switch employers. Several commented that they both "decrease competition and suppress wages" as emergency physicians are bound by their restrictive contracts and unable to pursue a job with a potentially higher wage, lest they relocate. This particularly harms patients in rural or underserved areas, as emergency physicians who work in them and wish to switch employers must move away from the area, thereby exacerbating the existing shortage of health care workers in underserved areas.

"In rural America where doctor shortages are a daily event this further restricts supply if doctor must relocate outside region."

"It penalizes underserved areas for which a doctor might stay if able to make a lateral move to a hospital in the same area, but will leave because of the penalty in the non-compete clause."

"I have found noncompete clauses make it much more difficult to not only find a job but to change jobs as needed. It stifles competition and worsens access to care for many rural patients. Physicians that could do shifts in underserved areas are restricted due to noncompete clauses."

In addition, 52 percent of all respondents said that noncompete clauses made it more difficult for emergency physicians to find a job; 44 percent of respondents that identified themselves as solely employers/leaders of a group agreed; 44 percent of respondents that identified themselves solely as employees/individual contractors agreed; and 78 percent of respondents who identified themselves as both an employer and an employee agreed. Thus, many emergency physicians are stuck in positions where they may be unhappy but are unable to switch employers, thereby occupying a job that may be better suited for another employee that is barred from applying. Said one respondent:

> *"[Non-competes make it] significantly harder to find jobs in same area and forces physicians to stay in jobs in which they are unhappy."*

Non-compete clauses also bar emergency physicians from "moonlighting" at other facilities, an opportunity which can enhance job flexibility, allow physicians to expand their skills, and help them earn additional income. Thus, if they are restricted by a noncompete clause that suppresses their wages, they are unable to supplement this financial strain. Of respondents who have had a noncompete clause in their contract in the past five years, 12 percent felt limited by their inability to moonlight:

> *"I changed from a local/regional independent practice to an academic position in another state. I work for a state institution, and am prohibited from working at outside hospitals without a "kickback/Dean's tax". While I'm at a level 1 trauma institution, I've lost my peds/rural experience. And yet our residents are required to rotate in both. My moonlighting in the past has been only 5-10% of my total income, so it's not the money. It's the independence, and skill level that I value."*

> *"As a fellow in my late 30's and the only physician in my family, I have been the one to provide when my family needs money. Not being able to leverage a contract or even moonlight at a nearby facility over a holiday weekend forces me into continued financial strain. No one should get to say what I do or where I work in my free, unscheduled time."*

Q. Have any noncompete agreements made it more difficult for providers of healthcare services to hire physicians, nurses, or other professionals? If so, how?

Employers/leaders of a group feel the effects of noncompete clauses on their practices as well. Seventy-five percent of respondents who identified themselves as employers or leaders of a group used noncompete clauses in their hiring. Of these respondents, 37 percent said that noncompete clauses make it more difficult to hire and/or that they have had candidates decline employment because of the noncompete clause.

> *"It has caused physicians in my group to have prospective employees decline to work with us as their non compete clause from a previous job prevents them from working in our sites, or to have new employees limited in which sites they can cover due to distance from previous jobs."*

> *"I have been turned down by candidates because of a non-compete. I declare early in the process as a result. Previously, it would only be when a contract was received."*

> *"It's made it difficult to hire physicians in the region that want to work for us. They've worked a year or two in the university system only to find they have to essentially leave the state due to a 100 mile non-compete by the university. Even for ER and ICU employment which would be unreasonable to see how that would meaningfully affect the university hospital practice. They essentially use it to force staff to stay against their will, or otherwise be forced to relocate their families to another city or state.*

Many of these employers do not have the choice to exclude the noncompete clause, as 73 percent of respondents who use noncompete clauses cited corporate mandates (including by a contracting hospital system) as the reason for usage.

> *"Corporate entity requires and inflexible. 'Take it or leave it."*

Of the employers who use a noncompete clause, 79 percent said that a categorical ban would either have a positive or minimal impact on their group, whereas 10 percent said that it would have a negative impact on their group. Among all employers overall, 90 percent said that a categorical ban would either have a positive or minimal impact on their group. Of those remaining who said that a categorical ban would have a negative impact on their group, they cited fears of insecurity of contract with their contracting hospital and potential for a mass exodus of employees to another hospital. One respondent noted they felt noncompetes provide their group with additional stability:

"The non-compete is an attempt to protect our group from being terminated by the hospital or at least force an acquiring competitor to negotiate with us if it desires to employ some or all of our physicians and APPs. This has nothing to do with local market, as we don't prohibit working in another facility. The non-compete decision and how we would use it was a mutual, unanimous decision by all the physicians when it was established, and no new physician has objected to it."

Once again, ACEP deeply appreciates the Commission's efforts to root out unfair and anti-competitive conditions faced by many emergency physicians that limit their right to freely practice medicine in their communities. It is clear from our questionnaire results that emergency physicians, as highly skilled workers, are negatively affected by noncompete clauses and that on the whole their negative impacts far outweigh potential benefits.

We recognize the Commission's preference of addressing harmful labor market conduct through case-by-case enforcement and public advocacy. ACEP firmly believes that the unique nature of emergency medicine can make noncompete agreements particularly ill-suited to the specialty, and we reiterate our strong support for eliminating restrictive noncompete agreements in health care to strengthen our health care workforce and protect the vital patient-physician relationship.

Thank you for the opportunity to provide comments. Should you have any questions, please contact Laura Wooster, ACEP's Associate Executive Director of Advocacy and Practice Affairs, at lwooster@acep.org.

Sincerely,

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President, American College of Emergency Physicians