

Should noncompete provisions restrict physicians' pandemic care?

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The COVID-19 pandemic has raised the question of whether physicians should temporarily be allowed to provide care that is prohibited by restrictive covenants in their contracts. In ordinary circumstances, providing care to patients of a competing practice would often run afoul of these agreements. But in a pandemic, shouldn't physicians' ethical commitment to public health take precedence?

The AMA has created an ethics resource page, "[Restrictive covenants and patient care in a pandemic](#)," that offers expert advice on managing these common features of employment, also known as noncompete agreements. Pulling together numerous opinions from the *AMA Code of Medical Ethics*, it provides a comprehensive guide to help physicians stay on the right side of their ethical obligations.

"In the best of all possible worlds, physicians would have negotiated amendments to a contract that unduly restricted their ability to practice," the webpage says, giving exemptions for emergencies as an example. "When that is not the case, the *AMA Code of Medical Ethics* provides guidance."

What to know about covenants

Citing opinion 11.2.3.1, "[Restrictive Covenants](#)," the resource page notes that noncompete agreements restrict competition and may disrupt continuity of care and limit access to care.

"Opinion 11.2.3.1 further provides that physicians should not enter into covenants that 'unreasonably restrict the right to practice medicine,' and 'do not make reasonable accommodation for patients' choice of physician,'" the page says. "Such covenants may thwart physicians' general obligation to support access to care for all."

Read the *Code's* [opinion](#) on contracts to deliver health care services.

What to do in an emergency

Citing opinion 8.3, “[Physicians’ Responsibilities in Disaster Response and Preparedness](#),” the resource page notes that restrictive covenants can also undermine physicians’ ethical commitment to provide urgent medical care in the context of public health.

“The ethical obligation for physicians to respond and provide care in the face of disaster is fundamental and exists independent of any contractual duty,” it says, also citing [Principle III](#), which notes that physicians have an ethical obligation to seek changes to contract terms that are contrary to the best interests of patients.

But if physicians are unable to immediately make revisions to their contracts, they may still have legal protection.

“As a matter of law, in a crisis such as a pandemic, any contractual obligation that would thwart the treatment of patients during such an emergency would likely be deemed unenforceable as violating public policy,” the page says.

More help on COVID-19

The AMA ethics resource pages—which now address more than a dozen issues at the heart of the COVID-19 pandemic, including [providing patient care remotely](#), [prescribing medications responsibly](#) and [caring for patients at the end of life](#)—have been developed based on inquiries from physicians and policymakers.

“The *Code* has more guidance than the titles of individual opinions would lead you to believe, and often there are opinions throughout the *Code* that are relevant to a single question,” said Elliott Crigger, PhD, director of ethics policy at the AMA. “The ethics resource pages each compile multiple opinions to answer what’s vexing people today and also what’s coming down the pike.”

The AMA and the Centers for Disease Control and Prevention are closely monitoring the COVID-19 pandemic. Learn more at the [AMA COVID-19 resource center](#). Also check out pandemic resources available from the [JAMA Network™](#) and the [AMA Journal of Ethics®](#), and consult the [AMA’s physician guide to COVID-19](#).