

Restrictive covenants and patient care in a pandemic

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One concern raised by the COVID-19 pandemic is whether physicians could provide care outside of a non-compete agreement or restrictive covenant. For example, when patients from a physician's former practice seek advice or appointments. As a legal matter, in normal circumstances this would violate the agreement. As a question of ethics, the answer is not so straightforward.

In the best of all possible worlds, physicians would have negotiated amendments to a contract that unduly restricted their ability to practice (Opinion 11.2.3, "Contracts to Deliver Health Care Services"), perhaps even a clear exemption for emergencies or disaster. When that is not the case, the *AMA Code of Medical Ethics* provides guidance.

Opinion 11.2.3.1, "Restrictive Covenants," notes that "covenants-not-to-compete restrict competition, can disrupt continuity of care, and may 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." Such covenants may thwart physicians' general obligation to support access to care for all (Principle IX, *AMA Principles of Medical Ethics*).

More important, in situations of pandemic they can undermine physicians' specific ethical commitment to public health to provide urgent medical care (Opinion 8.3, "Physicians' Responsibilities in Disaster Response and Preparedness"). The ethical obligation for physicians to respond and provide care in the face of disaster is fundamental and exists independent of any contractual duty. Under Principle III, physicians have an ethical responsibility to seek changes in legal provisions "which are contrary to the best interest of the patient."

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.

Additional ethics guidance in a pandemic

The AMA offers an overview of foundational guidance regarding medical ethics for health care professionals and institutions responding to the COVID-19 pandemic.