



Missouri  
CHAPTER

*American College of Cardiology.*

April 5, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

**Re: Notice of Proposed Rulemaking, Federal Trade Commission; Non-Compete Clause Rule;  
88 Fed. Reg. 3482 (RIN: 3084-AB74) (January 19, 2023)**

Dear Chair Khan,

The Missouri Chapter of the American College of Cardiology (MO-ACC) appreciates the opportunity to comment to the Federal Trade Commission on their proposed Non-Compete Clause Rule. We endorse the position taken by the American College of Cardiology (ACC) in their comment letter dated April 3, 2023, which outlines the harm that non-competes have on both providers and patients alike, while acknowledging that there are certain situations where non-competes of *limited scope* and *duration* may be beneficial to the healthcare marketplace.

Our Chapter membership encompasses over 97% of all Cardiologists practicing in the State of Missouri, as well as numerous Advanced Practitioners and other Allied CV Team Members. Survey data demonstrates that from 2008 to 2018, the proportion of Cardiologists that were employed rose from 10% to 84% as a result of multiple marketplace changes. Over two-thirds of Cardiologists (68%) surveyed report now being subject to restrictive covenants in employment contracts. Many of these restrictive covenants span the entire duration of employment and up to two-years beyond the end date of a contract, effectively forcing providers to abandon their patients and leave the employer's market—even if the latter spans across multiple state lines. Although many restrictive covenants currently in place are clearly overbroad and—in many cases—unenforceable, the burden of litigation often serves as a deterrent to providers to even raise a challenge. Such restrictive covenants not only interfere with physician-patient relationships, they also curtail physicians' power as patient advocates.

Prior to the mass shift of providers to integrated/employed arrangements, independent providers concerned that a hospital was failing to deliver quality care and services could take their patients to another facility if the hospital failed to take corrective action. Many broad restrictive covenants currently in place effectively eliminate that option, forcing providers to either accept whatever employers mandate, or pack up and relocate their families while abandoning their patients in the process.

Reasonable exceptions to non-competes may occur in situations where employers are making a significant up-front investment to bring on a new employee or develop a service line (*e.g.*, covering overhead for a new provider as they grow their practice or investing in new equipment or facilities); however, even in these cases there is no justifiable reason from a fair-competition standpoint as to why the non-competes should extend beyond the time where the initial investment has been recuperated—usually within 1 to 3 years from the start of employment.

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We would like to specifically call out the comment letter submitted by the American Hospital Association (AHA), dated February 22, 2023. This letter implied that the AHA represents “270,000 affiliated physicians, 2 million nurses and other caregivers”. We assure you that this is *not* the case. While the AHA may represent the corporate interests of its member hospitals, they do not represent their employees, including the vast majority of Cardiologists and Advanced Providers.

The MO-ACC appreciates the opportunity to provide input to the FTC as it considers acting to eliminate the use of non-compete clauses. We support the Commission’s stated intent to consider non-compete clauses an unfair method of competition while acknowledging some extremely limited forms and usage of the practice may be reasonable. Any implemented reforms must be considered through the lens of improving patient care and promoting the continued effectiveness of our clinical workforce.

A handwritten signature in black ink, appearing to read 'G. Soto', with a long horizontal line extending to the right.

Gabriel E. Soto, M.D., Ph.D., F.A.C.C.  
President, Missouri ACC  
Member, ACC Board of Governor