

Associate Dentist Non-Compete Agreements: What you need to know

I hear a lot of differing opinions on non-compete clauses and what they should or shouldn't mean regarding an associate dentist agreement. There are opinions that all non-competes are unconstitutional and, therefore, all are unenforceable to the other end of the spectrum that they are fully enforceable. Like most hypotheses, reality lies somewhere in the middle. To be ultra-clear, I am referring to associate agreements in the future, not purchasing agreements, as that is a different monster.

Non-compete clauses are in place to protect business owners, in our case, practice owners. The clauses prohibit associates from practicing within a specific geographic radius within a specific duration after the associate agreement terminates. The clause is obviously in place to shield the current owners from any potential competition of the associate leaving and working nearby.

Coming out of dental school, I often heard things like "strike these clauses at all costs." More often, all-or-nothing advice like the above example is just plain poor. There is a real need for the practice to protect itself, so asking them to strike the clause seems very selfish. I have found it impossible to "strike these clauses" in my career. Instead, I negotiated them to a more reasonable radius and time frames. Every person and every circumstance is specific, so you need to get a feel for your needs while negotiating the non-compete clauses in your agreements.

City VS. Country

The city vs. the country, more commonly referred to as urban vs. rural, will greatly impact the "size" of the non-compete. For example, a dental office in Phoenix, AZ, will expect other dental clinics within a mile of their location, while a small-town practice may only have one or two clinics for the entire town. The non-competes associated with work in said locations should therefore vary. Moreover, finding a new associate in a city vs. a rural setting is very different for owners, which also plays a role in the non-competes.

If you worked in Phoenix and needed to terminate your position, it would make sense not to allow you to work at the office immediately down the street, where patients will certainly find you (possibly leaving the current practice). The office needs to maintain these patients of records. Therefore, a 1-3 mile radius in most circumstances seems standard in urban environments. My advice is to always negotiate the smallest radius possible; I have found 2 miles to be standard practice in Phoenix. That radius would allow the associate to find work without having to relocate their family while also shielding the owners from predictably losing patients of record to the previous associate.

On the other hand, in rural settings, working at another practice within the town could have a massive impact on the revenues of the current office. Therefore, rural areas tend to have much larger radiuses associated with them, typically related to population densities. I have seen as small as 5 miles and as wide as 100 miles. Both seemed reasonable for the geographic areas the associate was planning to work within. Simply put, no "one size fits all" exists in the associated non-compete geographic radius, especially in the more rural setting. Again, negotiate as small of a radius as possible while realizing the owner does need some level of protection.

In general, I have found more conserved time frames on the duration of time for the non-competes. Inherently, most owners will ask for between 2-5 years. This is way too long. The duration should be no longer than one year; ask for 6 months and settle on 9 months with negotiations. Never sign something longer than 2 years.

A final comment on negotiating your non-compete. Ensure the radius is only around your specific dental office(s). If you work for a DSO or owner with multiple locations, make the non-compete only around the office you perform dental work. Suppose a DSO has 20 locations in a city, and your agreement isn't specific to the actual location you worked at. In that case, you may be unable to find a job in the city just based on the various non-compete radiuses around all the DSO offices, true horror story.

A brief comment on the legality of non-competes. An article published by NBC News in February of this year discusses how the Biden administration is trying to end non-compete clauses, especially in healthcare. To my understanding, nothing official has come to fruition, but just commenting to a possible employer that the BBB may view non-competes as unconstitutional may get them to lower the radius or time frame of the non-compete within your agreement to something you are comfortable with.

I have embedded the NBC article link below for your edification.

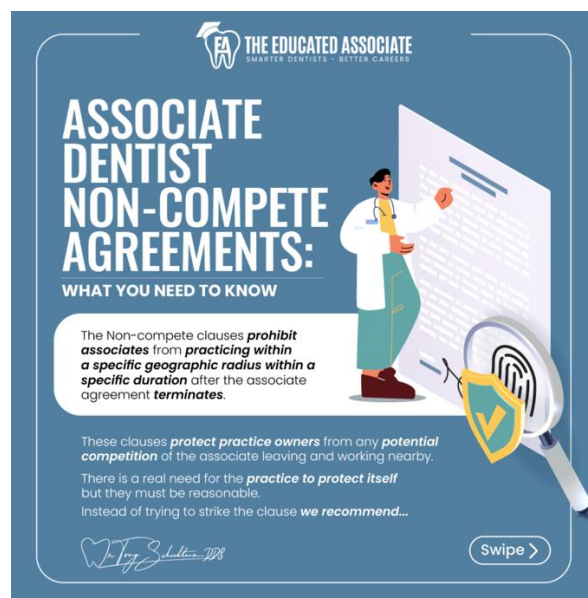
<https://www.nbcnews.com/politics/economics/biden-ban-non-compete-agreements-health-care-industry-rcna70099#>

The non-compete is an important aspect of the associate agreement and should be considered by both parties before signing the contract.

If you have anything to add or have any questions, please reach to me directly through the "Contact me" button on the website and schedule a free 10-minute phone call. As always, stay drilling my friends.

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#noncompete #dentalcontracts #dentist #contractlaw #associatedentists



1 NEGOTIATE A MORE REASONABLE RADIUS

City vs. Country

Practicing in the city vs. the country will greatly impact the "size" of the non-compete.



A dental office in **a city** will expect other dental clinics within **a mile of their location**. Therefore a **1-3 mile radius** in most circumstances seems standard in urban environments.



Rural practice may **only have one or two clinics for the entire town**. Rural areas tend to have much larger radiuses associated with them, typically related to population densities. **As small as 5 miles and as wide as 100 miles.**

ALWAYS NEGOTIATE THE SMALLEST RADIUS POSSIBLE

This allows the associate to **find work without having to relocate their family** while also shielding the owners from predictably losing patients of record to the previous associate.

Dr. Tony Sullivan DDS

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2 ENSURE THE RADIUS IS ONLY AROUND YOUR SPECIFIC DENTAL OFFICE(S)

If you work for an **owner with multiple locations**, make the non-compete only **around the office you perform dental work**.

Suppose a DSO has 20 locations in a city, and your agreement isn't specific to the actual location you worked at. In that case, you may be unable to find a job in the city just based on the various non-compete radiuses around all the DSO offices. A true nightmare!



3 NEGOTIATE A MORE REASONABLE TIME FRAME



NEVER SIGN SOMETHING LONGER THAN 2 YEARS.

The duration **should not be longer than one year**. Ask for 6 months and settle on 9 months with negotiations.

Dr. Tony Sullivan DDS