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In my September 2025 post, **The FTC Buries Its Ban on Non-Competes, But Sharpens Its Aim on Violations**, I wrote about the FTC's pivot on noncompetes: the nationwide ban was dead, but the agency's appetite for enforcement, *particularly in healthcare*, was very much alive.

At that time, the Commission had issued a Request for Information targeting physician and nurse noncompetes, sent warning letters to large healthcare employers, and made clear that case-by-case enforcement under Section 5 of the FTC Act was the new strategy.

On January 27, 2026, the FTC held a half-day public workshop it entitled "Moving Forward: Protecting Workers from Anticompetitive Noncompete Agreements." In reality, the title was a statement of the FTC's direction.

At the workshop, FTC Chairman Andrew Ferguson restated what he's said before: he opposed the blanket ban proposed under the Biden administration because the FTC lacked the statutory authority to issue it. And then he said everything that matters for you: noncompetes can be, and often are, anticompetitive, and the agency is going after the ones it thinks are. But not with a rule, *with enforcement.*

The Chairman's Test

Ferguson articulated the working standard the FTC will use to evaluate whether a noncompete survives scrutiny: it must (a) advance a legitimate pro-competitive purpose and (b) be narrowly tailored to advance only that purpose. His practical formulation:

"Ask whether a less restrictive type of restraint would accomplish the goal or goals that the non-compete is purportedly meant to promote."

Think about how that applies to your medical group. If you already have a non-solicitation agreement that prevents a departing physician from raiding your referral relationships and your staff, why do you need a noncompete on top of it? If you have a confidentiality agreement that already protects your proprietary clinical systems and data, what exactly is the noncompete adding? If your honest answer is “we just want to make sure they can’t compete with us”, that is the answer the FTC is looking for. And not in a good way.

The Anonymous Complaint Pipeline

The workshop also formalized something you should not ignore. The FTC explicitly urged employees who believe their noncompete unlawfully restricts their job mobility to file an anonymous complaint for investigation. The Commission has now built a direct, low-friction channel from some disgruntled physician employee or subcontractor straight to an FTC investigator. Moving forward, you should assume that channel is being used.

What This Means If You Run a Physician Group

Most physician group noncompetes were drafted to be defensible under state law. That’s a reasonable baseline, but it’s no longer sufficient on its own. The FTC’s test is separate from your state’s test, and it applies regardless of whether a state court would uphold the clause.

The practical question to ask yourself is whether you can articulate clearly and specifically the pro-competitive purpose your noncompete serves that a narrower restriction wouldn’t. If the honest answer is that the clause was drafted broadly because broad is harder to get around, that is exactly the kind of agreement the agency just announced it is looking for.

A few things worth doing now. Pull the noncompete provisions in your physician employment agreements, subcontract agreements, and shareholder or partnership agreements. Look at scope: specialty, geography, and duration. Ask whether any of those provisions would survive Ferguson’s test. Not your state’s test, Ferguson’s test.

Then consider whether your non-solicitation and confidentiality provisions are already doing the work the noncompete is supposed to do. If they are, the noncompete may be generating regulatory exposure without providing meaningful additional protection.

Finally, document your reasoning. If you have a legitimate business justification such as protecting a genuine investment in physician training, maintaining patient continuity during a transition period, preserving proprietary clinical methodology, document it. The FTC’s case-by-case approach means that articulated, defensible justifications matter in a way they didn’t when the agency was swinging a broad hammer at everything.

What This Means If You're Subject To a Noncompete?

For the individual physician who signed something, a subcontract, an employment agreement, a buy-in document, with language in it that says you can’t practice within

a certain radius for a certain period if you leave, it's enforceability is in question but the answer is more complicated.

It depends on the state, on the specific facts, and increasingly, on how your agreement would look to an FTC investigator measuring it against the Chairman's test. The agency has now made explicit that physicians are a priority population for enforcement. If your noncompete is overbroad, broad geographic scope, long duration, no apparent connection to a legitimate interest that a narrower clause couldn't serve, it is precisely the kind of agreement the FTC just announced it is looking for.

That doesn't mean your noncompete is unenforceable, or that the FTC is going to arrive like a cavalry unit and nullify it. It means the landscape has shifted in a way that's worth understanding before you decide whether to stay, negotiate, or leave.

Some Timely Takeaways For You

1. **The blanket ban is gone; the attention isn't.** The September pivot and the January workshop together send the same message: the FTC is not doing theater. It is building cases. Healthcare, specifically medical practice, was the prime industry discussed at the workshop.
2. **Run Ferguson's test on your own agreements.** For every noncompete clause you use, or are subject to: does it advance a pro-competitive purpose? Is there a less restrictive alternative that would serve the same goal? If you can't answer both questions comfortably, someone else will eventually answer them for you.
3. **Treat the anonymous complaint mechanism as a real variable.** If you run a group and have a physician who is unhappy enough to complain, the FTC has made that path frictionless. The practical defense is a noncompete that couldn't reasonably be characterized as overbroad or otherwise anticompetitive in the first place.
4. **State law is the floor, not the ceiling.** Several states largely or entirely prohibit noncompetes as a matter of state law. Some have physician-specific laws. Even where your state permits noncompetes, the FTC's federal enforcement authority is a separate layer. You need to understand both, and how they interact.
5. **If you are evaluating a departure, understand what you actually signed.** The specific language matters. The state matters. The nature of your role and the scope of the restriction all matter. Don't assume the clause is enforceable. Don't assume it isn't.

In the event you'd like to review your group's noncompete provisions, or take a hard look at an agreement you're currently subject to, let me know.

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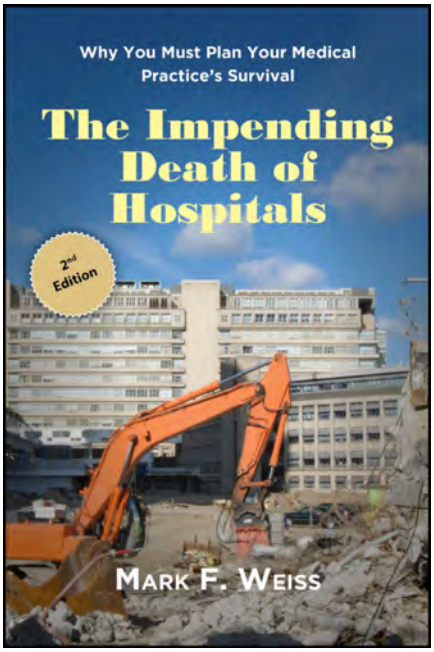

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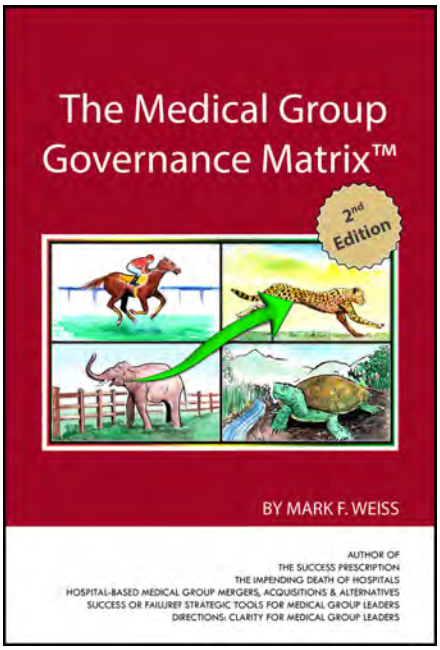

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