Non-Competition Agreements

- Courts analyze the *reasonableness* of a physicians non-compete in the context of:
  - The employer's particular business interests
    - (1) Protecting against loss of patients to a departing physician
    - (2) Protecting its investment in the physician's training
    - (3) Protecting confidential business information or patient lists
  - Public policy of facilitating patient access to physicians

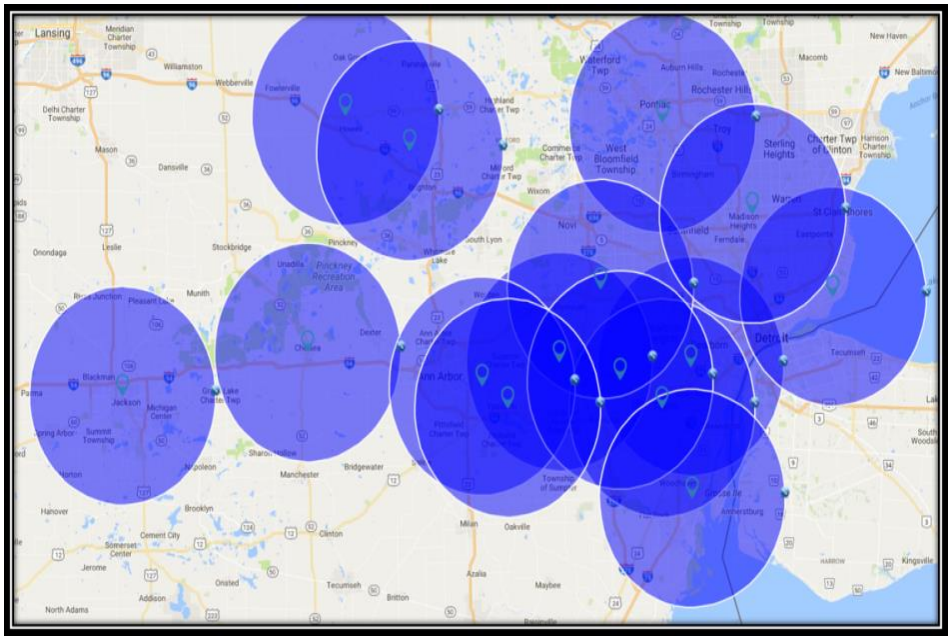
See AMA's position pg. 3

What is considered “reasonable?”

Non-compete agreements must be *reasonable* as to their:

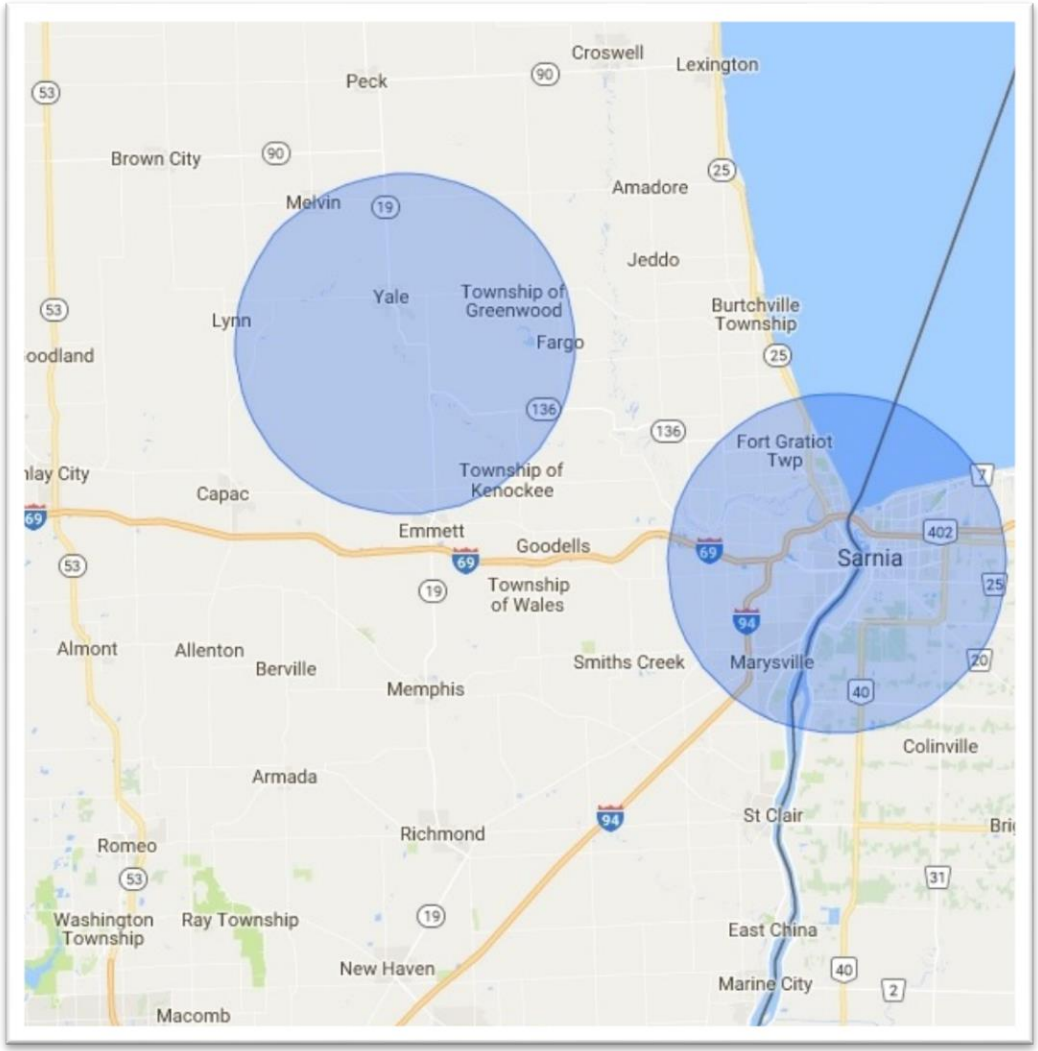
1. **Duration**
2. **Geographical area**
3. **Scope of Employment**

Likely unreasonable



Non-Compete Upheld or Voided?

- **Duration:** 1 year after termination of employment.
- **Geographic Area:** 7 mile radius from two family practice clinics.
- **Line of Business/Scope:** Family physician prohibited from all medical practice.



Answer: UPHELD

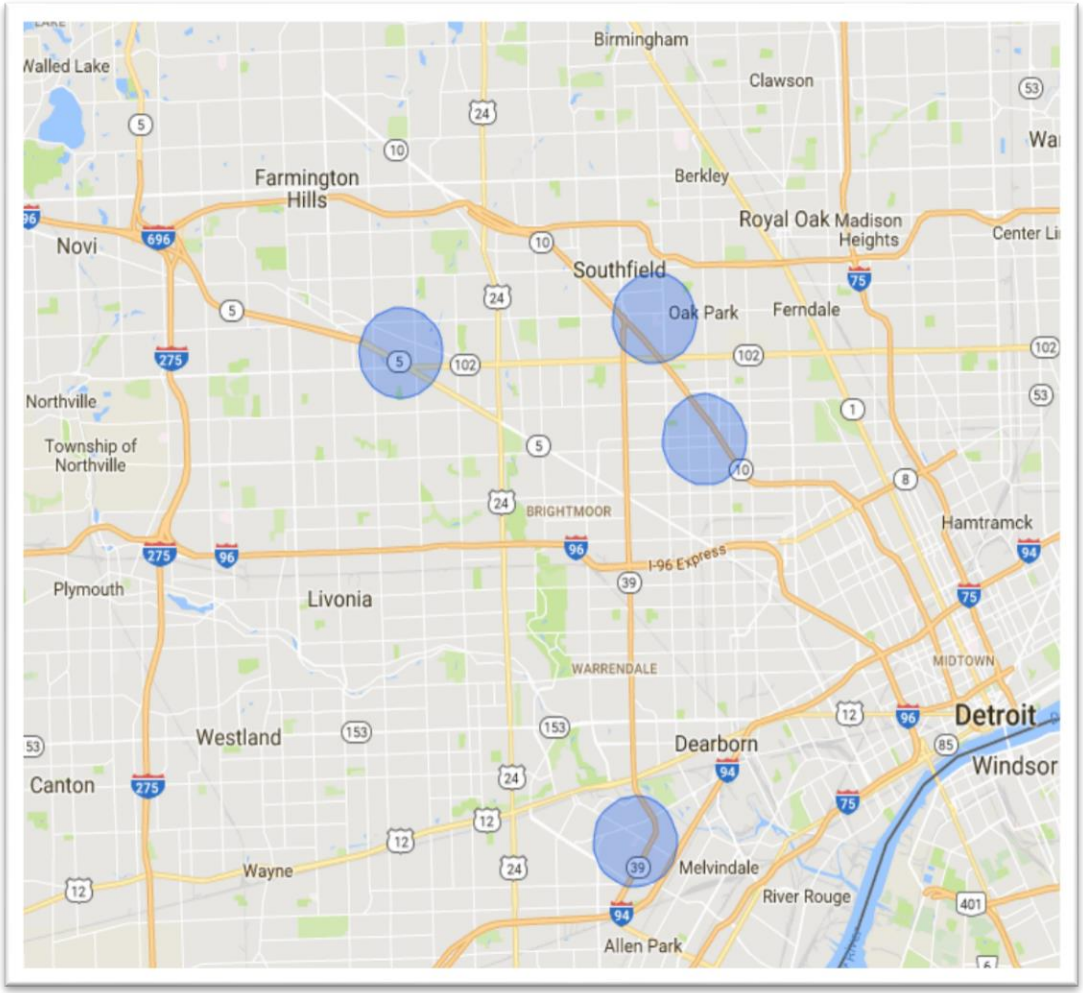
- The non-compete was modest in geographical scope and was not an unreasonable length of time.

- Non-compete protected employer's competitive business interest in retaining patients and prevented physician from using patient contacts gained during the course of his employment as an unfair advantage in competition with the employer.

Case: S*t. Clair Med., P.C. v. Borgiel*, 270 Mich. App. 260, 715 N.W.2d 914 (2006)

Non-Compete Upheld or Voided?

- **Duration:** 1 year after termination of employment.
- **Geographic Area:** 1 mile radius from any location practice group provided medical services to.
- **Line of Business/Scope:** Cardiologist prohibited from all medical, surgical, and consulting services.



Answer: UPHELD

- Court determined geographical area and length of non-compete was not unreasonable.
- Physician had an office outside of the 1 mile radius and was free to treat new patients there, as well as other hospitals.
- Reasonable radius and length weighed against the very restrictive scope of preventing all medical practice.

Case: Cardiovascular Clinical Assocs., P.C. v. Gowman, 2014 Mich. Cir. LEXIS 190 (Mich. Cir. Ct. Aug. 1, 2014).

Non-compete agreements outside of Michigan

- **California:** Notorious for outlawing non-compete agreements
  - Public policy favors employee mobility
  - Caveat – Several statutory exceptions exist:
    - If you sell your ownership interest in a business, you cannot solicit former customers.

- **Illinois:** Physician must be continuously employed for 2 years or more to be enforceable.
  - More employee friendly

- **Ohio:** Similar to Michigan
  - However, a non-compete restraining a physician from competing with his employer is unreasonable when it imposes undue hardship on the physician and is injurious to the public. The physician's services are vital to health and treatment of the public and his medical expertise is critical to the community.

Non-solicitation Agreements

- Does the restriction apply to all patients the employer serves, or only those you actually see?
- Determine the scope of the term “solicit.”

See example pg. 3

Indemnification – Rx for Indigestion!

Employer “hold harmless” clauses are generally a cause for concern because the physician may assume liabilities of the employer, which may not be insured.

Recommendations:

- Avoid indemnification provisions if possible
- Insist on no payment if favorable outcome
- Insist on no payment if covered by insurance
- Insist on allocation of fault attributable in part to others

See example pg. 4