

Restrictive Covenants for Dental Contracts in South Carolina

Highlights

- Most associate contracts will have restrictive covenants for time and geography
- Key consideration in geographic restrictions is where patients come from
- SC courts have upheld geographic radius restrictions of 20 and 5 miles
- SC courts have upheld time restrictions of 1, 2, and 3 years

If you are planning to join a dental practice as an associate, chances are good your contract will contain a “non-compete,” or restrictive covenant. Conversely, if you own a practice and want to hire an associate, you will likely want to restrict that dentist from opening a practice near yours and siphoning off your patients. Restrictive covenants limit a person’s ability to practice a profession in a certain geographic area and/or for a set period of time. The legality and enforceability of these covenants are controlled by state law, so you should consult an attorney or appropriate expert in your state prior to signing your employment contract.

Most practice owners and associates will be primarily concerned with the time and geographic restrictions in their employment contracts. There is no single rule on what an enforceable time and location restriction is. Rather, the enforceability will depend on the facts (e.g., location of a practice’s patients) of each circumstance. The following case law offers some guidance on what courts in South Carolina may consider a reasonable restrictive covenant.

In a 2013 case¹, a South Carolina appellate court upheld a restrictive covenant for a cardiovascular physician partnership agreement with a 1-year time restriction and a 20-mile radius geographic restriction. In that case, the geographic radius was measured from any practice location where the cardiovascular doctor routinely provided services in his last year of employment. In other cases, South Carolina courts have upheld a radius restriction of 5 miles,² and time restrictions of 1 year,³ 2 years,⁴ and 3 years.⁵

For dentists, the key consideration in determining the reasonableness of geographic restriction is where the practice’s patients come from.⁶ For example, if 95% of a practice’s clients come from the area within a 10-mile radius of the practice, it may be unreasonable for an owner to restrict an associate from practicing within 20 miles of the practice.

Because the enforceability of restrictive covenants will vary from case to case, it is best to speak with an attorney prior implementing or agreeing to one in an employment contract.

¹ *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (S.C. App. 2013)

² *Café Associates, Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (S.C. 1990).

³ *Baugh* at S.E.2d 491

⁴ *Delmar Studios of Carolinas v. Kinsey*, 104 S.E.2d 338, 341 (S.C. 1958).

⁵ *Standard Register Company v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (S.C. 1961).

⁶ *Baugh* at S.E.2d 491