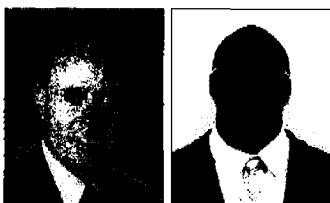


Non-Compete Agreement in the Health Care Profession Upheld

by William M. Corrigan, Jr., JD & Darryl M. Chatman, JD

The purpose of this article is to provide an overview of this important area of law.



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Introduction

Missouri courts often enforce non-compete agreements with respect to medical practitioners. In fact, there are more reported covenant not to compete cases involving the medical profession than any other profession in Missouri. In 2006, the Missouri Supreme Court issued its first non-compete case in 21 years, and it concerned the health care profession. Moreover, some non-compete agreements contain liquidated damages or “buy out” provisions which allow a former employee in breach of the non-compete agreement to pay some amount of compensation to the former employer in order to practice within the restricted time period and location. The purpose of this article is to provide an overview of this important area of law.

The Purpose of Non-Compete Agreements

The purpose of enforcing non-compete agreements is to protect employers from unfair competition by former employees without imposing unreasonable restraints on the latter. Missouri courts will typically enforce a non-compete agreement if it serves to protect a legitimate business interest of the former employer, usually the loss of patients, and is reasonable in time and location. Most of the recent Missouri

cases have enforced non-compete agreements with respect to physicians. The duration of the injunctions has been as long as five years, and as short as one year. The geographic restriction is often a 50 to 75 mile radius from the employer’s office.

Recent Supreme Court Case

In 2006, the Missouri Supreme Court issued its first non-compete case in 21 years, and it concerned the health care profession. The case involved two employees of Healthcare Services of the Ozarks, which provides home healthcare services. The employees supervised field employees, such as nurses and other healthcare workers, who in turn had direct contact with patients. Both of the employees signed non-compete agreements, and they eventually left Healthcare Services to join a competitor, Integrity Home Care.

Soon after the employees began working for Integrity, several of their former subordinate employees at Healthcare Services joined them as employees of Integrity. Those employees successfully diverted to Integrity some of the patients they had serviced on behalf of Healthcare Services. As a result, Healthcare Services filed a lawsuit to enforce its non-compete agreements.

The Missouri Supreme Court

confirmed the principle that, in the healthcare context, patient relationships are a protectable interest giving rise to the enforcement of non-compete agreements. Since the employees could (and did) successfully exert significant influence over the employees they supervised to solicit patients to switch providers, the non-compete agreements were enforceable.

Additional Components of a Non-Compete Agreement: Liquidated Damages

Some non-compete agreements give the physician the option of "buying out" the non-compete by paying a dollar amount, often one or two years of salary. The provision is typically referred to as a liquidated damages clause. Liquidated damages are typically a measure of compensation which, at the time of contracting, the parties agree will represent damages in case of breach. For example, a non-compete agreement may not allow a physician to practice within ten miles of their former employer for a certain time period, but may give them the option to pay some amount of compensation to the former employer in order to practice within the restricted time period and location. A liquidated damages provision will likely be enforceable if it has two qualities:

- (1) the harm caused by the breach must be difficult to accurately estimate;
- (2) the amount fixed as

damages must be a reasonable forecast of the harm.

Damages associated with a physician's departure are difficult to calculate. Thus, the inherent complexity and uncertainty of such a calculation renders a liquidated damages clause appropriate. Courts from around the country have held that the physician's income for their last year or two in practice is a reasonable forecast of the damages to the former employer.

Disclosures

This article is written by William M. Corrigan, Jr., JD, and Darryl M. Chatman, JD. The information contained in this article should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and readers are urged to consult their own attorney concerning their own situation and any specific legal questions.

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