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Restrictive Covenants in Medical Practice

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Restrictive covenants have always been a useful and legitimate means of protecting businesses in various professions from unfair competition, especially from departing employees or management who've had access and introduction to clients, patients or customers. Such restrictions are especially important for healthcare providers whose personal connections with patients form the basis for a continued relationship.

The courts have recently taken a harder and a more stringent look at the content and language of healthcare restrictive covenants, based at least in part on the increasing concern regarding access to healthcare services. The American Medical Association and state medical societies also have issued policy statements that these covenants improperly interfere with the availability of healthcare services and the physician-patient relationship, making their scope and enforceability even more unsettled.

Restrictive covenants are temporal and geographic protections limiting the right of individual practitioners to compete with their former employer. Heretofore, reasonable restrictions were routinely enforced as negotiated contract terms. The growth of multi-office medical practices, however, has made the geographic and patient-contact restrictions increasingly more significant because of the creation of enlarged non-compete zones, some even encompassing an entire city and surrounding suburban areas. In addition, restrictive covenants circumscribe the nature and scope of post-employment contact between the provider leaving the practice and the patients of that practice. We have recently resolved disputes on behalf of both practices and those healthcare providers departing to join competing medical practices or establishing their own practice in close proximity to their former employer.

There are no reported Maryland appellate decisions interpreting the application of restrictive covenants to the healthcare industry. Yet historically the state has always embraced some well-known general principles applicable to the drafting and enforcement of covenants. We envision the future trend of judicial scrutiny will employ these evolving principles:

First, Maryland will no longer simply "blue-pencil" or re-write overly broad temporal or geographic covenants to make them more "reasonable" and legally enforceable. Rather, the state courts may read the covenant out of the agreement as if it did not exist.

Second, the restrictive covenants cannot prevent the departing physician from practicing in all areas of medicine by broad restrictions such as "practicing medicine" or "providing health care services." Instead, they must clearly limit the restrictions to specific areas and their related specialties, e.g., perionatology and obstetrics/gynecology. Broad geographic restrictions involving areas in which the employer does not practice are equally suspect.

Finally, the restrictions regarding patient and former colleague contact must permit patients the freedom to select their physicians. Restrictive covenants must fairly address a practice's legitimate and protectable professional/business interests in its patients while at the same time protect the rights of the patients to continue with their chosen healthcare provider.

There are many reasons why physicians leave to join another practice or establish their own practice. Such departures regularly trigger drawn-out, expensive, time-consuming (and professionally distracting) negotiations or undesirable and expensive litigation. This can and should be avoided if the covenants are properly drafted at the outset of the relationship and both parties accommodate the legitimate rights of the other party. Time is more economically spent at the outset of the relationship to agree on understandable restrictive covenants respectful of both parties' rights and which, if necessary, can and will be upheld by a court of law.

