

ENFORCEMENT OF NON-COMPETITION AGREEMENTS AGAINST PHYSICIANS

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Non-competition agreements present significant challenges to many employers, including medical practices who utilize them in connection with recruiting and hiring physicians. Often such agreements are viewed as the employment version of a pre-nuptial agreement in which the employer is attempting to protect itself from an employee's inevitable departure. Many misconceptions exist regarding whether non-competition agreements are enforceable, especially in the medical context. The most common justifications given as to why non-competition agreements are unenforceable against physician-employees are that Florida is a right to work state and patients ultimately have the right to choose their physician. Neither justification prevents the enforcement of non-competition agreements against physicians practicing in Florida.

The Florida legislature has enacted a comprehensive statute governing non-competition agreements. In the statute, the legislature specified two additional requirements that a party enforcing a non-competition agreement must satisfy which are not required for the enforcement of other contracts. First, an employer must establish the existence of one or more legitimate business interests that the non-competition agreement is designed to protect. In other words, the employer must have a valid business reason for enforcing the non-competition agreement against a former employee and the reason must be something more than freedom of contract. Second, an employer must prove that the restrictions contained in the non-competition agreement are reasonably necessary for the protection of the legitimate business interest(s) that the non-competition agreement is designed to protect.

The Florida non-competition statute contains a non-exclusive list of legitimate business interests. In the context of non-competition agreements involving physicians, the legitimate business interest most often invoked is the protection of substantial patient relationships. The rationale is that physicians who develop strong relationships with the medical practice's patients could lure some or all of his or her former employer's patients to a different medical practice. The protection of patient relationships is a strong justification for enforcement of a non-competition agreement against a departing physician, at least with respect to physicians whose practices involve the treatment of patients over long periods of time.

The patient-relationship interest may not apply in all physician non-competition cases. Many physicians, by virtue of their specialties, are unlikely to develop long-term patient relationships and instead rely on referrals from surgeons or other physicians. The protection of patient relationships may not justify enforcement of a non-competition agreement against these types of physicians. The protection of referral sources, especially those developed by virtue of the physician-employee's relationship with the medical practice-employer, logically could constitute a legitimate business interest justifying enforcement of a non-competition agreement. However, Florida's non-compete statute does not identify the protection of referral sources as a legitimate business interest. One appellate court has explicitly rejected the protection of referral sources as a legitimate business interest and another has implicitly recognized the protection of referral sources as a legitimate business interest. The Florida Supreme Court has not ruled on this issue.

Assuming that a medical practice can prove that it has one or more legitimate business interests, a medical practice seeking to enforce a non-competition agreement against a departed physician-employee also must establish that the non-competition restrictions are reasonably necessary for the protection of the interests established by the medical practice. In other words, the restrictions must be reasonable in time, geographic scope and substantive scope. This requires the former employer to establish why the restrictions in the non-competition agreement are reasonable. The Florida statute provides certain guidelines on reasonableness as to time based upon the legitimate business interest established by the medical practice. If a medical practice can establish the existence of a legitimate business interest but the restriction is determined to be broader than is "reasonably necessary," a Florida court must reduce the restriction to a reasonable scope and then enforce the restriction as modified.

The Florida legislature has made clear that non-competition agreements are enforceable under the right circumstances. Since patient relationships can constitute a legitimate business interest, the legislature also has made clear that such agreements can be enforced against physicians.