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Covenants not to compete are permissible for Michigan physicians

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A covenant not to compete is an agreement between a physician and his or her employer, which prevents the physician from practicing in a specified geographic area for a given period of time if the physician's employment terminates.

These agreements are protective mechanisms commonly used by employers to shield their patient bases and referral sources from competition. They also serve to protect the employer's investment in a physician-employee by encouraging the physician to remain with the employer.

Covenants not to compete, including those for physicians, are permitted under Michigan law if the agreement was made after March 29, 1985, to protect the employer's reasonable competitive business interests. **Along with protecting an employer's reasonable competitive business interests, each covenant not to compete must, under the facts and circumstances, be reasonable as to the duration, geographic scope, and type of employment or line or business.**

If a court determines any of the terms are unreasonable, it has broad discretion to reform the unreasonable portion(s) of the agreement to conform to the court's determination of what was reasonable under the facts and circumstances. The court would then enforce the agreement as modified by its determination.

As stated above, a covenant not to compete must protect an employer's reasonable competitive business interests. Interestingly, no Michigan court has yet attempted to provide an exclusive listing of the reasonable competitive business interests that are protectable by a covenant not to compete. For medical practices, protection of goodwill and the retention of existing patients are likely to be the reasonable competitive business interests sought to be protected by a covenant not to compete.

According to Michigan law, for a covenant not to compete to be enforceable, the restrictions included must be "reasonable as to their duration." Unfortunately, there is no bright line test as to what constitutes a reasonable duration since Michigan law has not defined exactly how long a "reasonable duration" extends for a covenant to remain enforceable. Rather, the "reasonableness" of a stated duration depends on the reasonable competitive business interests that the employer is seeking to protect.

By way of illustration only, stated durations such as six months (for health care consulting services), one year (for an employer recruiter), and three years (for a computer software salesperson) have been found to be reasonable when arising out of an employment relationship.

Also in 2001, the Michigan Court of Appeals, in an unpublished decision, was faced with a trial court decision granting an employer a preliminary injunction that restrained its former employee, an athletic trainer, from competing with the employer for two years. The court issued an order finding that two years was unreasonable and limited the preliminary injunction's period of restraint to one year.

Like duration, the "reasonableness" of the stated geographic scope also depends upon the interests sought to be protected. Employers are looking to restrict former employee physicians from setting up a competing practice within the general service area of the employer. Courts may look to where the practice obtains the majority of its referrals to determine the reasonableness of the geographic scope within a particular agreement.

Lastly, the covenant not to compete must be reasonable as to the type of employment or line of business that is being restricted. Again, this determination depends on the reasonable competitive business interest to be protected.

In the medical profession, the type of employment is highly specialized. Given the years of training to attain one's specialty, it would likely not be reasonable to expect a physician to give up the ability to practice his or her specialty solely due to a termination of employment, absent unusual circumstances. As such, an employer's protection of its reasonable competitive business interests, such as goodwill and retention of existing patients, will most likely have to be served by imposing a reasonable stated duration and geographic scope in the covenant not to compete, and not from limiting the departing physician from practicing his or her specialty.

To review, covenants not to compete between employers and physicians are permissible in Michigan. The employer must be acting to protect its reasonable competitive business interests and the restraint must be reasonable with respect to duration, geographic scope and the type of employment or line of business. As noted above, "reasonable" is determined from the facts and circumstances surrounding each covenant not to compete when entered into by an employer and a physician.