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Common Sense Regarding ... The No Competition Clause

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Many doctors that work together have a no-competition clause. Doctors who work together without a no-competition clause often regret it in the future. Most frequently, no-competition clauses are between associate and head doctors, partners, or a doctor who is selling the practice to a new doctor. The purpose is to protect the investment in a practice that has been built over a period of time.

The legality of a no-competition clause, that is, will the no-competition clause hold up in court, is often debated, and it seems that every doctor has an opinion. Some doctors believe a no-competition clause is absolutely defensible and is "carved in stone." Other doctors feel it is not legal and can be broken at will.

In truth, some restrictive covenants do stand up in court and some do not. Typically, the no-competition clause that has the most binding effect are those that are based on reasonable time restrictions, reasonable radius restrictions, and reasonable remedies in case of default. Typical mileage restrictions vary from 3 miles (in densely populated areas) to as high as 75 miles (in sparsely populated areas), with a common average being 10-15 miles. The time restriction is much less variable -- usually from one to five years. The average is two-three years.

The remedy or penalty for not observing the no-competition clause is usually stated in a percentage of collections from the new location or a preset amount. For example, if an associate doctor does not abide by the no-competition clause and sets up a practice within the radius or time restriction, he may pay 20 percent of collections over the next 3 years to the doctor enforcing the no-competition clause.

Common Sense

Common sense tells us that to avoid confrontation and ill will between doctors, we should never sign a no-competition clause that we cannot live with or do not intend to honor.

If a no-competition clause is required in your employment contract or buy-sell agreement, be sure that the no-competition clause does not create a financial or lifestyle hardship, should you be forced to comply with that no-competition clause. In other words, if your no-competition clause says that you cannot practice within ten miles for a period of two years, it would not create an undue hardship for you to drive ten miles to your new office for the next two years. It would allow you to live in the same area you're presently living; it would allow your children to attend the same schools; and would allow you to maintain the same social circle. In other words, the no-competition clause is bearable for the years it is in force.

If, on the other hand, you have signed a 5 year no-competition clause with a 50-mile radius restriction, you may find it virtually impossible to maintain the same quality of life under this prohibitive covenant.

Common sense would also tell us that, if you feel that you may want to practice inside the no-competition restrictions, you should add an additional option to the contract which would allow you to "buy out" the no-competition clause, either at a flat rate or a percentage of revenue generated from the new office. In this way, both doctors have a pre-agreed upon solution to any no-competition clause impasse and both can terminate the relationship in a professional manner.

The Bottom Line

No-competition clauses are logical to protect investments, but think ahead and be sure that you can live with the restrictions in the agreement. Whether the relationship between doctors continues indefinitely or terminates prematurely, it can be handled as two friends within the profession.

Your comments on this topic or other questions are welcome. Please send your correspondence to Dynamic Chiropractic, Practice Enhancement Column, 21541 Surveyor Circle, P.O. Box 6100, Huntington Beach, CA 92615.

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