

The Enforceability of Restrictive Covenants in the Medical Fields

The issue of restrictive covenants in connection with medical services has always been tricky due to public policy concerns about the patient's choice to continue care with the same doctor irrespective of the doctor's employment issues. The same policy considerations could arguably be applied to the veterinary field.

In the medical field pertaining to human patients, it has been argued that restrictive covenants are *per se* void and unenforceable. However, New Jersey courts have determined a different approach.

Although restrictive covenants are not favored between a physician and a hospital, the New Jersey Supreme Court has, so far, declined to hold such covenants to be *per se* unreasonable and unenforceable. *Pierson v. Medical Health Centers, P.A.*, 183 N.J. 65, 69 (2005). Instead, restrictive covenants in post-employment contracts in the medical profession must be evaluated based on the specific facts of the case to determine whether the restrictions are unreasonable and unenforceable.

When evaluating the reasonableness of the contract provisions, New Jersey courts apply factors found in *Karlin v. Weinberg*, 77 N.J. 408 (1978). The factors require courts to determine (1) whether the restrictive covenant protects the legitimate interests of the employer (i.e., to maintain ongoing relationships with patients), (2) imposes no undue hardship on the employee, and (3) is not adverse to the interests of the public. If the covenant fails any part of this test, the courts have discretion to disregard it, reduce it in geographic scope, or determine it to be only partially enforceable to the extent reasonable under the circumstances.