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The end of non-compete clauses for physicians?

By:

JAMES D. CULLEN

Non-compete clauses[1] are common features of employment contracts, especially in situations where the employee has access to trade secrets. In addition, non-compete clauses are often used to protect the employer's good will and/or its relationship with customers, clients and even patients, by preventing a current employee from leaving his/her employment and soliciting customers, clients or patients for business.

Until recently, the only limits imposed upon non-compete agreements in physician contracts in Rhode Island were the same as those imposed on all non-compete clauses; that they must be reasonable in their geographic and temporal scope given the interest being protected. However, two bills have been proposed—S. 2578 in the Senate and H.7586 in the House—which would render most non-compete clauses in physician contracts void. The bills, which are very similar, provide:

> Any contract or agreement which creates or establishes the terms of a partnership, employment or any form of professional relationship with a physician licensed to practice medicine pursuant to this chapter which includes any restriction of the right of such physician to practice medicine shall be void and unenforceable with respect to said restriction.

See S. 2578 (http://webserver.rilin.state.ri.us/BillText16/SenateText16/S2578.pdf); and H. 7586 (http://webserver.rilin.state.ri.us/BillText16/HouseText16/H7586.pdf). The bills explain that the restrictions rendered void would include any geographic restriction on a physician's right to practice medicine for any period of time after the end of employment. Id.

The bills also preclude any restriction on the physician's right to treat, advise, consult with or establish a physician/patient relationship with a patient of the physician's current employer, except within the first five years of the physician's employment. Id.

Both bills have been subject to a hearing by the respective House and Senate committees and have been "held for further study." It is unlikely that there will be any immediate action on either bill and it is possible that neither bill will pass this session.

1 Also known as covenants not to compete and restrictive covenants.

Despite the stalled legislative efforts, the enforceability of non-compete clauses has been called into question as a result of a March 29, 2016 decision of Justice Silverstein of the Rhode Island Superior Court in Medicine and Long Term Care Associates, LLC. v. Shahzad Khursid, C.A. No. PC-2015-0458.[2] Justice Silverstein refused to enforce the non-compete clause in a contract between a physician and his employer on public policy grounds.

Dr. Khursid was employed by Medicine and Long Term Care Associates, LLC ("MLTC"), to provide health care to geriatric patients in a number of nursing homes. Dr. Khursid's contract included an exclusivity and non-competition clause providing that for two years after termination of Dr. Khursid's employment he was prohibited from maintaining an office practice within nine miles of MLTC's place of business. In addition, Dr. Khursid was prohibited from soliciting or attempting to solicit business from MLTC's referral sources or patients for two years after his employment ended.

On December 28, 2014, Dr. Khursid left MLTC's employment. A short time later, MLTC received notice that Dr. Khursid may have entered into an agreement with the John Clarke Retirement Center—one of MLTC's clients—to provide medical care to residents. MLTC filed suit seeking an injunction relying upon the restrictive covenants in their contract with Dr. Khursid. MLTC also sought compensatory and punitive damages.

Justice Silverstein's March 29, 2016 decision addressed only MLTC's request for injunctive relief.

Relying on public policy, particularly the fact that "people are encouraged to confide in their health care providers and thus have an 'imperative need for confidence and trust' with respect to their physicians," Id. at *5 (quoting State v. Almonte, 644 A.2d 295, 306 (R.I. 1994)), a Massachusetts statute prohibiting non-compete provisions in physician contracts—Mass.

2 https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/15-0458.pdf

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Gen. Laws Ch. 112 § 12X[3]—as well as various Massachusetts court decisions, Justice Silverstein refused to grant MLTC's request for injuctive relief. Justice Silverstein held that "the strong public interest in allowing individuals to retain health care service providers of their choice 'outweighs any professional benefits derived from a restrictive covenant.'" Id. (quoting Meehan v. Shaughnessy, 535 N.E.2d 1255, 1262 (Mass. 1989)). As such, the court denied injunctive relief. Notably, Justice Silverstein left open the possibility that MLTC could obtain compensatory damages.

Whether it occurs by way of legislative action or judicial fiat, Rhode Island law may be trending towards a position where almost all non-compete clauses and restrictive covenants in physician contracts with their employers will be declared unenforceable.

The attorneys in the Healthcare Group at Roberts, Caroll, Feldstein & Peirce have experience representing physicians and other healthcare providers, including medical practices, in contract negotiations. We would be happy to discuss how we can help you with your particular situation.

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3 Mass. Gen. Laws Ch. 112 § 12X provides:

> Any contract or agreement which creates or establishes the terms of a partnership, employment, or any other form of professional relationship with a physician registered to practice medicine pursuant to section two, which includes any restriction of the right of such physician to practice medicine in any geographic area for any period of time after the termination of such partnership, employment or professional relationship shall be void and unenforceable with respect to said restriction; provided, however, that nothing herein shall render void or unenforceable the remaining provisions of any such contract or agreement.

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