

From the President...

Benjamin Z. Stallings, II, MD, President, MedChi

My friend (and MedChi Past President) Stephen Rockower, MD, is fond of saying that “if you’re in medicine, you’re in politics.” I’m going to paraphrase to introduce this issue of *Maryland Medicine*: If you’re in



medicine, you’re in law. Although only a small group of industrious physicians also have law degrees under their belts, each of us is required by the nature of our work to learn and understand the legal considerations that go hand in hand with the practice of medicine.

MedChi’s advocacy efforts in Annapolis are often centered on the

need to reduce the burdensome legal complexities for physicians and patients. The results of each legislative session directly impact the laws and regulations that must be navigated by practicing physicians.

Although MedChi cannot offer legal advice to members, we can (and do) offer as many resources as possible to ensure that you understand the complex legal issues that must be considered by practicing physicians. We have outlined a few legal considerations in this issue that I hope you’ll find useful, but they only scratch the surface of the many complexities of medical practice and business ownership. Thankfully, MedChi’s Law & Advocacy team and Practice Management team are ready for your calls, emails, and questions.

I, for one, am comforted by having MedChi as a resource for the complexities of medical practice. MedChi’s support allows me to concentrate on medicine and to focus on my patients. I hope you share my appreciation for this wonderful resource.

Important Contact Information on Topics Noted in This Issue

1. Practice Management Services: 410.539.0872, ext. 3360.
2. PDMP Call Center: 410.539.0872 ext. 3324, or pdmp@medchi.org.

Non-compete Clauses: Key Considerations

Gene Ransom, CEO

Non-compete clauses are a staple of thousands of health care agreements in Maryland. While some non-compete language can be fair and reasonable, some non-compete clauses put the physician at a severe disadvantage. Physicians can use non-compete language to protect their practice when hiring mid-level employees like nurse practitioners or physician’s assistants. Other physicians are required to agree to a non-compete as a condition of employment by a hospital system. Most often, after a physician leaves an employer, non-competes will limit the area the physician can work to a certain geographic region.

In Maryland, non-compete language found in employment contracts is enforceable if non-compete conditions are:

1. Supported by adequate consideration;
2. Ancillary to an employment contract;
3. Limited to the area and duration that are reasonably necessary for the protection of the employer; and
4. Not an undue hardship on the employee or contravene public policy. *Source: Becker v. Bailey, 299 A.2d 835, 838 (Md. 1973)*

Maryland law will enforce non-compete restrictions for two reasons: (1) if the former employee could misuse trade secrets or client lists that would result in unfair competition, or (2) if the former employee provided unique services.

Maryland courts use the “blue-pencil” approach and will strike unreasonable provisions of the non-compete while enforcing the remainder of the restriction. Other state courts may strike the entire agreement if it is even partially unenforceable.

Please consider the following when you negotiate non-compete language:

- **Consult an attorney before signing anything. MedChi can refer you to a lawyer who understands health care and non-compete clauses.**
- **Remember that each state’s laws are different, and what applies to your colleague in Texas may not apply to you in Maryland. Every state has a different set of codes, rules, and case law in effect.**

MedChi has had an increasing number of questions and comments from members concerning non-compete clauses and what is considered fair public policy. MedChi would like to hear your questions, comments, or concerns. Please do not hesitate to share your thoughts on this or any other issue.

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