

MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY
HOUSE OF DELEGATES

MEC Report 1-15

INTRODUCED BY: Medical Economics Council
Employed Physicians Committee

SUBJECT: Employed Physicians Committee Reports on Restrictive Covenants

1 At the Fall House of Delegates, the Baltimore City Medical Society introduced Resolution
2 22-14, asking MedChi to support legislation in the Maryland General Assembly that prohibits
3 non-compete clauses in physician contracts. Historically, MedChi has discouraged any
4 agreement which restricts the right of a physician to practice medicine for a specified period of
5 time or in a specified area upon termination of an employment, partnership or corporate
6 agreement.¹ MedChi found these types of covenants to be unethical if they are excessive in
7 geographic scope or duration in the circumstances presented, or if they fail to make reasonable
8 accommodation of patients' choice of physician.² At the September 2014 meeting, this matter
9 was referred to the Board of Trustees for study and to report back to the House of Delegates at the
10 Spring meeting. Under the direction of the Board of Trustees and the Medical Economics
11 Council, the Employed Physicians Committee reexamined MedChi's position on restrictive
12 covenants and developed the following report.

13
14 In Maryland, non-compete clauses will be enforced if the physicians are compensated
15 sufficiently, and the clauses are ancillary to an employment contract, are limited to the area and
16 duration which are reasonably necessary for the protection of the employer, and do not impose an
17 undue hardship on the employee or contravene public policy.³ Maryland will consider
18 non-compete clauses as necessary safeguards if they are used to protect the employers' interest in
19 fair competition and the unique services that the employee provided to the employer.⁴
20 Non-compete clauses would prevent former employees from misusing client or patient lists and
21 confidential business practices⁵ and preclude the employee from providing his unique services in
22 direct competition with his or her former employer.⁶ Non-compete clauses also protect the
23 employers' financial investment in the employee, as the employer goes to considerable lengths to
24 develop and market the employee's services and practice.

¹ 410 Restrictive Covenants (PEC 4/99)

² *Id.*

³ *Becker v. Bailey*, 299 A.2d 835, 838 (Md. 1973).

⁴ *Millward v. Gerstung Int'l Sport Educ., Inc.*, 302 A.2d 14,16 (Md. 1973).

⁵ Derek W. Loeser, "The Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians Should Know before They Sign" (2003).

⁶ *Millward v. Gerstung Int'l Sport Educ., Inc.*, 302 A.2d 14,16 (Md. 1973).

1 However, despite the protections the restrictive covenants may provide, these clauses are
2 still restrictive and problematic for not only employed physicians, but also their patients. First
3 temporal and geographic covenants can limit the physicians’ ability to find new employment and
4 maintain a similar livelihood, forcing the physician to relocate, which causes unnecessary
5 difficulties for the physicians and their families. Secondly, non-compete clauses often
6 accompany non-solicitation clauses, which prevent physicians from communicating with their
7 patients after the physicians leave their employer.⁷ While employers allow patients to follow
8 their physicians to the physicians’ new practice, the physician may not tell the patient where the
9 new practice will be located or even that the physician is leaving at all.⁸ The patient should decide
10 whether to follow the physician to his or her new practice and have the ability and requisite
11 knowledge to do so, if the patient so chooses.⁹ The lack of option disrupts the continuity of the
12 patient’s treatment and lowers the quality of care provided.¹⁰ The Council on Ethical and Judicial
13 Affairs, the judicial division of the American Medical Association, has stated that continuity of
14 care is a patient right. “The physician has an obligation to cooperate in the coordination of
15 medically indicated care...and the physician may not discontinue treatment of a patient as long as
16 further treatment is medically indicated, without giving the patient reasonable assistance and
17 sufficient opportunity to make alternative arrangements for care.”¹¹ Furthermore, the business of
18 medicine is not similar to other areas of business. Derek W. Loeser points out in his article “The
19 Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians Should
20 Know before They Sign,” that while a “noncompetition clause may harm customers of a business
21 financially, it is the rare case that the actual health of the customer will be affected by the practice.
22 This may not be the case in medicine.”¹² Patient health and patient choice, above all else, should
23 be the priority when considering the impact of restrictive covenants.

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25 The Employed Physicians’ Committee believes that MedChi’s current policy strikes a
26 good balance between the legitimate interests of both the employed and employing physician.
27 Thus, the Committee recommends that the House of Delegates confirm its previous statement
28 against restrictive covenants.

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31 As approved by the House of Delegates at its meeting on April 25, 2015.

⁷ Derek W. Loeser, “The Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians Should Know before They Sign” (2003).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Derek w. Loeser, “The Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians should know before They Sign” (2003).

¹² *Id.*