Blake Pecoraro

Professor Fink

Employment Law

February 9, 2019

Assignment 3: The Doctor Is In

1. Revised Counter-Offer
   1. Dr. Williams will agree that during the term of this Agreement and for a period of two (2) years immediately following its expiration or any earlier termination, Dr. Williams shall not, directly, within the fifteen miles of Newtown Family Homeopathy:
      1. Engage in the practice of alternative/homeopathic pediatrics as a physician or
      2. Become employed as a partner, director, officer, or shareholder of any health care provider or managed care organization that provides patient care; and
      3. May not consult patients using Newtown’s care facilities during the time of employment regarding medical or health concerns for the same period unless those patients no longer utilize such care facilities in the period following employment termination or expiration.
2. Although there is no per se rule in North Carolina stating that covenants not to compete for medical doctors are generally prohibited, there are rules regarding public policy concerns in the medical field. In considering the potential harm to society in the medical field with regard to non-competes, courts look to the need for practitioners in the specialized area, the impact of establishing a medical monopoly in the area affected, and the public interest in having the choice to pick their own physician. See Calhoun v. WHA Medical Center, PLLC, 178 N.C.App. 585 (2006).

The original covenant proposed by Newtown would restrict Dr. Williams from practicing in the medical field wholly, which on its face seems unreasonable. Limiting Dr. Williams from even practicing in any field of medicine, and not just the homeopathic pediatrics or even just pediatrics generally, seems entirely unreasonable. Instead, by only preventing Dr. Williams from working in the alternative/homeopathic pediatrics field, he is still able to seek employment working in traditional pediatrics or in another field of medicine, and would not harm him or his family. Moreover, by preventing him from even indirectly working in the medical world, Newtown ties Dr. Williams’ hands in seeking any employment even in an executive role. Moreover, Dr. Williams’ contract is for two years and thus, the non-compete should reflect something closer to the employment’s duration. Three years seems too much, while two years fits more. While the covenant does seem reasonable as to the location restricted and the valuable consideration, it may not meet the requirements for not going against public policy.