Hanna Stoner

February 5, 2019

Employment Law

Professor Fink

Chapter 5: Covenants Not to Compete: The Doctor is In

Revised Version of noncompete Provision

**Post-Termination Competition and Employment.**

Dr. Williams acknowledges that Newton Family Homeopathy (the “Practice”) will expose Dr. Williams to all of the Practice’s business and professional relationships, as well as provide access to its hospital contracts, training and on-the-job experience. Dr. Williams also acknowledges that practicing medicine in the immediate geographic areas served by the Practice following termination of this Agreement for any reason would be a threat to patient confidentiality and the Practice’s legitimate business interests.

Dr. Williams agrees that during the term of this Agreement and for a period of 1 (1) year immediately following its expiration or termination, Dr. Williams shall not directly within the city limits of Newton

i. Engage in family homeopathic medicine or

ii. Become employed by, be a health care consultant or medical director at another homeopathic health care provider or managed care organization that provides homeopathic or holistic patient care.

Explanation of this revision:

The original noncompete would not satisfy the legal standard in North Carolina because the purpose of the noncompete appeared to be to prevent doctors from practicing in the same area and to eliminate competition. The noncompete would need to be protecting the employer’s special advantage or some proprietary information. The scope of the noncompete itself was not reasonable in multiple aspects including the duration and the type of activity protected by the noncompete.

In North Carolina there is a two-part test for noncompete provisions. The first part looks at the purpose of the noncompete and what interest it is serving. In the original noncompete agreement it said that Williams would just be a threat to the practice’s legitimate business interests. It is not legal to do this just to eliminate competition, which is how it appeared in the original format. I added the threat to patient confidentiality clause to make it appear to have a more legitimate reason and to give it the appearance of having the purpose of protecting proprietary information.

The second part of the test addresses the scope of the terms of the noncompete and how reasonable these terms are. This is considered for the geographic area, the duration and the type of activity. This is assessed on a case by case basis. I saw issues in the original format with the duration and type of activity. While I do not know if three years is too long, I felt like it was, so I shorted it to one year. I would want to know more about industry standards for the medical field and what is an appropriate amount of time. The type of activity included was too broad. It originally said that he could not engage in the field of medicine within the limits of Newton. I think this is way too broad. Homeopathic medicine is a small subsect of alternative medicine, and it seems to be too specific to preclude Williams from all medical practice within the town of Newton. If Newton was a small sized town it may be more reasonable, but I would need to know more about the size of the town of Newton. If this is the only homeopathic doctor within a reasonable mileage of Newton a wider mileage could be acceptable. I tried to narrow the scope of the practices covered by this agreement.

Points to Consider

1. Newton Family likely has the request that Dr. Williams signs a non-compete provision so that they do not loose doctors and so that doctors are not sharing trade secrets. They also likely have this provision so that the doctor does not just open another practice and steal all of the patients from the practice they originally practiced at. These are legitimate concerns because it will materially impact the business.

The test for North Carolina is to first look at the purpose of the noncompete and to then to see if the scope of the noncompete itself are reasonable.

It would be important to determine the true purpose of the non-compete provision.

This non-compete agreement seems somewhat reasonable, but I would want to know more about how large the town of Newton is, and if there are other metropolitan areas. If there is nowhere else to practice in the surrounding area this may be unreasonable, maybe a mile limit would be a more reasonable option. The three-year period does not seem reasonable nor unreasonable, I would want to know more about the industry standards for this type of agreement and if it was normal to have a shorter or longer period.

The one aspect of the non-compete that seems unreasonable is that Williams would not be permitted to engage in the practice of medicine. I think that this provision needs to be less broad.

2. (General Answer, see the above for the fully re-written non-compete) If it could be revised in favor of Dr. Williams it would likely include something about the type of medical practice included in the noncompete. Maybe instead of “Engage in the practice of medicine” it could say engage in the same practice area as Newton Family. Thus he would be able to practice at a Homeopathic office. Another option would be to change the time limitation to a shorter period. A third option would be to say that he could practice in a shorter period of time, such as only a year or something.

3. It matters that he is a physician because of the higher standards of privacy that physicians are held to.

4. Yes, it does impact my ability to represent Williams in negotiation with Newtown Family because of conflict of interest.

Non-Compete Worksheet

|  |  |  |  |
| --- | --- | --- | --- |
|  | Prohibited Conduct | Geographic Range | Temporal Duration |
| Restrictions proposed by employer | Dr. Williams shall not directly or indirectly within the city limits of Newton engage in practice of medicine or become employed by, or serve as an officer, director, shareholder, partner, health care consultant or medical director of any physicians office health care provider or managed care organization that provides patient care. | Within city limits of Newton | Three years |
| Employer’s legitimate interests | Patient privacy, maintaining patients | Within city limits of Newton |  |
| Legal Limitations and Employee Concerns | Preventing unfair competition and reasonable scope of the noncompete | Must be reasonable | Must be reasonable |
| Client’s Proposed Revision | Not practicing homeopathic medicine within Newton, not being employed by another homeopathic or holistic practice | Within City limits of Newton | One year |