

legal ease

Covenants not to compete —

Iowa law supports them, to a point; physician ethics discourage them.

by Jeanine Freeman, JD

Restrictive covenants, commonly found in physician practice contracts, often are ignored or passed over in the contracting process. Negotiating parties, whether a medical practice or the physician, need to pay close attention to the language of a restrictive covenant and its potential illegality. Dealing with this issue when a practice relationship goes sour does not serve either party well.

The Iowa Supreme Court upholds restrictive covenants, even in health care, to the extent reasonably necessary to protect the employer's legitimate interests without imposing undue hardships on the employee or adversely affecting the public interest. The Iowa courts are reluctant to disturb contract

terms that both parties knowingly agreed to.

Facts are important in each case. The burden of proof ordinarily lies with the employer who is restricting legitimate business competition. The usual remedy is injunctive relief issued by the courts.

Key inquiries focus on the nature of the restriction (i.e., practice of medicine v. practice of a specialty or specific procedure); the scope of the geographic and durational restrictions; and any marketplace and public needs unique to the profession or business at hand. A covenant unlimited in its duration and geographic boundaries likely would be illegal. A covenant prohibiting an employee from working in the employee's professional field, likewise, would not withstand legal scrutiny. From there, issues

of legality are murkier.

Time restrictions as long as 2-3 years have been upheld in some business situations. For physicians, however, a practice restriction beyond a year may be suspect. The legality of geographic restrictions also vary; county-wide geographic restrictions might be reasonable in a rural practice contract but troublesome in an urban practice where radius restrictions may be defined more narrowly.

In 1991, the Iowa General Assembly passed legislation prohibiting restrictive covenants in physician contracts but the governor vetoed it, saying that the reasonableness standard of the Iowa courts sufficiently balanced the interests of medical practices and physicians employed by them.

Physician ethics disfavor restrictive covenants.



Jeanine Freeman is vice president of legal affairs for the Iowa Medical Society. Information in this column is not intended to be legal advice. Call your attorney with specific concerns.

AMA Ethical Opinion E-9.02: Covenants not to compete restrict competition, disrupt continuity of care, and potentially deprive the public of medical services. Agreements restricting the right of a physician to practice medicine for a specified period of time or in a specified area upon termination of a practice arrangement are discouraged. Restrictive covenants are unethical if excessive in geographic scope or duration or if they fail to make reasonable accommodation of patients' choice of physician.