

Ins and outs of physician contracts

Guest Column

Ginny Grimsley
News and Experts

Patients may just shrug when they learn their doctor plans to move to a new office.

After all, they can just follow, right?

Maybe not. Or at least, not easily.

Physician contracts often contain restrictive covenants that limit where doctors can work if they leave their current practices. The idea is to keep them from competing with their old employer.

For example, the contract could require the doctor's new office to be 15 or more miles away. The doctor also might have to give up privileges at the local hospital.

"These contract provisions hold numerous traps for the unwary," says Dennis Hursh, an attorney who has provided legal services to physicians for more than three decades and is the author of "The Final Hurdle: A Physician's Guide to Negotiating a Fair Employment Agreement." (www.TheFinalHurdle.com)

Patients can be left scrambling to find a new physician.

The situation can be even worse for the doctor, who essentially might have to start his or her career over again, building a new patient base.

Hursh says it's not unusual for him to answer desperate

phone calls from doctors who paid little attention when they agreed to their contracts, but now wonder whether their soon-to-be-former employers can enforce the restrictions.

"Unfortunately, they probably can," he says.

Doctors need to be diligent and negotiate favorable terms before they sign an employment contract, he says. Hursh says there are several ways to deal with restrictive covenants so that doctors are not facing career-damaging situations.

- Keep the distance reasonable. Although geographic restrictions are common, in most cases the agreement should not require the doctor's new office to be more than five miles from the old one. In rural areas, a somewhat larger area may be reasonable, Hursh says. Also, when employers have multiple offices, the distance rule should apply only to the office where the doctor spent most of his or her working time.

- The general practice of medicine should not be restricted. "It's one thing to agree that patients will have to drive five miles from your old office if they want to continue seeing you," Hursh says. "It's another thing to agree you won't see patients in hospitals, nursing homes or ambulatory surgical centers that are within the prohibited area."

- Continuing the doctor-patient relationship. Patients often become attached to a

particular doctor and want to stick with him or her. But when a doctor moves to a new practice that can get tricky.

Contracts usually prohibit doctors from directly asking their patients to follow them to the new practice, Hursh says. Barring such solicitation, whether it's in the office or by phone call or letter, is reasonable, he says. But advertisements by the doctor's new employer should not be considered direct solicitation.

- Sometimes restrictions should not apply. If an employer fires a doctor without cause, then the restrictive covenant should not go into effect, Hursh says. That's also true if the employer breaches its agreement with the doctor, although that can be difficult to negotiate, he says.

"An employer could worry the physician will claim some far-fetched theory of an alleged breach to get out of the restriction," he says. "One way to deal with that might be to list specific grounds for a breach in the contract."

Hursh says one of the most extreme cases he ever experienced involved a doctor whose non-compete clause prohibited the practice of medicine within 65 miles.

A hospital 62 miles away wanted to hire him.

It was while negotiating a contract with the hospital that Hursh and the hospital's attorney discovered the restriction.

OPINION

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“The restriction was so ludicrous that we both agreed that the former employer would almost certainly lose if they tried to sue,” Hursh says.

But the hospital figured: why take chances.

The offer to hire the doctor was withdrawn.