

Illinois Court Refuses to Enforce Non-Solicitation Clause in Physician's Employment Agreement

Article By:

Gayland O. Hethcoat

The Illinois Appellate Court's recent decision in [*Gastroenterology Consultants of North Shore, S.C. v. Meiselman*, 2013 IL App \(1st\) 123692](#) illustrates the limits on enforcement of restrictions on solicitation of former patients in physician employment agreements in Illinois.

The case involved a gastroenterologist, Dr. Mick Meiselman, who had been associated for more than 15 years with a gastroenterologist group, Gastroenterology Consultants of the North Shore, S.C., which he and several other physicians incorporated and for which they subsequently became employees. Dr. Meiselman's employment agreement contained a restrictive covenant that prohibited him for 36 months following termination of the agreement from soliciting the group's patients or treating any of its patients directly or in connection with any entity engaged in a competitive business and located within a 15-mile radius of each of the group's offices and the Evanston Hospital facilities. After Dr. Meiselman ended his employment and accepted a position with NorthShore University HealthSystem Medical Group, Inc., Gastroenterology Consultants accused him of violating the non-solicitation clause and accordingly sought a court order enjoining such violation. By his own admission, Dr. Meiselman treated any patient who sought his services, including patients he had previously treated at Gastroenterology Consultants.

Both the trial and appellate court, however, agreed that enforcement of the restrictive covenant was unwarranted. The critical factor to the courts was that Gastroenterology Consultants lacked a "legitimate business interest" in need of protection. Thus, according to the courts, the restrictive covenant was not reasonable.

The appeals court identified several facts that undercut Gastroenterology Consultants' claim to a legitimate business interest to be protected by the restrictive covenant. Prior to the group's incorporation, Dr. Meiselman practiced gastroenterology for approximately 10 years in the same service area, treating thousands of patients. From the very beginning of his association with the group, Dr. Meiselman continued treating patients and accepted referrals from physicians with whom he had developed relations before affiliating with the group. He further maintained independent relationships with his patients, and the group did not introduce him to either his patients or his physician-referral sources. Although the group provided administrative support to Dr. Meiselman's practice, it did not advertise, promote, or market it. Dr. Meiselman, moreover, billed for his services, and his compensation was based upon the revenue generated by his independent practice, which

had its own office and telephone number. In sum, the court held, there was no evidence that the group established a “near-permanent relationship” with the patients treated by Dr. Meiselman.

While the validity of a restrictive covenant will ultimately turn on the particular circumstances in a given case, the court’s analysis provides physician groups and other entities with useful considerations in drafting and enforcing restrictive covenants in physician employment agreements.

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