Ontario Chiropractic Association

Non-Competition Agreements

This issue was developed by **Gibraltar Group**, a Canadian-owned practice enhancement consulting firm specializing in chiropractic for the OCA.

Whether you are the owner of a practice or an associate at a practice, you will most likely be faced with a non-competition agreement at some time in your career. A "restrictive covenant" restricts an associate from practicing within a specified distance of the principal's office for a specified period of time. This "term" can be placed within an Associate agreement or placed in a completely separate agreement usually called a non-competition agreement.

A non-competition agreement or provision, properly written by a skilled lawyer, can be used to legally restrict an associate or staff member from soliciting the patients of a practice. The purpose of a non-competition and non-solicitation agreement is to protect a business owner's legitimate commercial interests.

Courts have been reluctant to uphold non-competition agreements that prevent a person from earning a livelihood and that are not in the public's interest. It is imperative that non-competition agreements not be overly restrictive. A court would consider the extent of the restrictions to determine if they are reasonably necessary to protect the principal practitioner's legitimate interests. "Reasonable" restrictions consist of:

- Reasonable as to the duration of the restrictions
- Reasonable as to the geographical area in which the restrictions apply
- Reasonable as to the activities that are restricted

These factors depend upon the particular circumstances of your situation including, among other factors, the industry and region of the province in which you are practicing. A restrictive covenant may be enforceable in one context but unenforceable in another, depending upon the particular circumstances.

Non-competition agreements need to be very carefully drafted in order for them to be enforceable in a court. If a non-competition agreement is poorly written and unreasonable, the agreement will not be enforceable and may not be worth the paper on which it is written. If you are a principal practitioner, you must speak with a lawyer when contemplating a non-competition and non-solicitation agreement. Your lawyer can advise you on ways to improve the likelihood that you can get to court quickly, obtain an order for the person soliciting your patients to stop, and ensure that the agreement will not be struck down as being unenforceable by a court.

Non-competition and non-solicitation agreement is a very serious agreement that can have severe consequences on an associate if s/he decides to leave and solicit your principal's patients. If, as an associate, you are asked to sign a non-competition agreement or an associate agreement that has a restrictive covenant in it, speak with a lawyer prior to signing to ensure you have a full understanding of your obligations and restrictions. It can become very costly if you sign the agreement without receiving independent legal advice and then later decide to breach the agreement terms by leaving your principal's place of business and soliciting the patients to your new place of business.

If you are a principal practitioner intending to hire the services of an associate, it is imperative for the associate to sign a non-competition agreement or at least an associate agreement with non-competition and non-solicitation clauses in it. Failure to obtain a written agreement to this effect can make it difficult and expensive to stop the associate from soliciting your patients later. In addition, potential purchasers of practices may be reluctant if the existing associates at the practice are not subject to non-competition and non-solicitation restrictions.

Ontario Chiropractic Association