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Restrictive Covenants in Physician and Nurse Practitioner Contracts

By: [Richard D. Watters](#)

Nowadays, almost all physician contracts and many nurse practitioner contracts contain restrictive covenants which generally prohibit or restrict the practitioner from competing against a former employer in the event the employment relationship should terminate. Although Missouri courts will enforce restrictive covenants, they cannot be enforced if their sole purpose is to prevent competition. The employer must have a legitimate business purpose or protectable interest to enforce restrictive covenants. This is why such agreements generally refer to protecting the employer's confidential business information and patient lists.

In a new decision out of the Illinois Appellate Courts, a physician successfully challenged his former employer's effort to enforce a restrictive covenant. In [*Gastroenterology Consultants of the North Shore \("Group"\) vs. Mick Meiselman, M.D. \("Physician"\)*](#), the Group attempted to prevent Dr. Meiselman from practicing within a 15 mile radius of the Group's office for three years, pursuant to a restrictive covenant in the Physician's employment contract. Dr. Meiselman was one of the founding members of the Group where he had worked for 15 years. He and all Group physicians had the same restrictive covenant in their employment agreements. When Dr. Meiselman left to join another practice, he continued treating patients he had seen while an employee of Group. In denying the Group an injunction against Meiselman, the Court noted that, while with the Group, he billed for his own services, maintained his own office, and kept his own telephone number. His compensation was based on his own productivity. The Group did not advertise, promote or market his practice and was not actively involved in it other than to provide administrative services. Referring physicians referred to individual doctors within the Group, including Dr. Meiselman, but not to the Group. On these circumstances the Court found that the Group did not have a legitimate business interest that needed protection and refused to enforce the restrictive covenant.

Groups that treat each physician as his/her own profit center on an eat-what-you-will compensation formula, with little real integration between physicians other than the sharing of administrative expenses, may not give the group practice a sufficient interest in the physician's practice to be protectable by a restrictive covenant.