Someone Call A Doctor! This Settlement Agreement Is Bleeding Out

Insights
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A federal appeals court recently ruled that an overbroad "no-rehire" provision in a settlement agreement with a former employee can be an unlawful restraint of trade under California law. In *Golden v. California Emergency Physicians Medical Group* (July 24, 2018), the Ninth Circuit Court of Appeals voided a settlement agreement between a physician and his former employer because one provision imposed a restraint of trade in violation of California's strict statute on non-compete covenants, *Business & Professions Code* Section 16600. The Court found that the broad no-rehire provision constituted a "restraint of substantial character" in two ways.

Section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." There are certain exceptions to this prohibition, but they are not applicable here. Section 16600 applies to any "restraint of a substantial character," not just noncompetition agreements. The Court concluded that a restraint of trade is "substantial" if it "significantly or materially impedes a person's lawful profession, trade, or business."

Here, the physician worked for a partnership of doctors forming a network of nearly 2,000 physicians across 11 states and in 160 medical facilities in California alone. After the physician was terminated, a legal dispute arose between him and the medical group. The parties came to an oral agreement to settle that dispute, but when the agreement was reduced to writing, the physician refused to sign the agreement due to the inclusion of a broad no-rehire provision. That provision provided that the physician: (1) could not work or be reinstated at any facility owned or managed by the medical group; (2) could not work at any facility contracted by the medical group; and (3) could be terminated by the medical group if it ever came to provide services to or acquire rights in a facility at which the physician was currently working as an emergency room physician or hospitalist.

The Court found that, based on the particular circumstances in this case, all three restrictions are impediments on the doctor's ability to practice medicine. However, only the second and third restrictions rose to the level of a "restraint of substantial character" in violation of Section 16600. The first restriction was found to be permissible mainly because it only dealt with the doctor's future employment with a specific entity, the medical group. Thus, the first restriction simply stated the obvious axiom that a worker does not have an absolute right to work for an employer without that employer's consent.

In contrast, the second and third restrictions differed because they dealt with the physician's current and future employment. The physician also worked at four other facilities that were contracted by the medical group (not owned or operated by the medical group, but rather engaged in a contractual relationship). If he signed the settlement agreement, the medical group would have the right to terminate him as opposed to refusing to hire him. The Court found this to be a restraint of substantial character.

The third restriction was disposed of similarly. If the doctor signed the agreement, he could be terminated in the future for working at a medical facility at which the medical group *later* acquired an interest in or with which the medical group later contracted *after* the doctor's employment had already begun. The broad language of the no-rehire provision in the settlement agreement that extended to third parties was critical to the Court's decision to invalidate the provision. However, the Court went one step further. Because the parties did not dispute that the no-rehire provision was material to the settlement agreement itself, the Court voided the entire settlement agreement.

Employers and businesses should take heed of this decision. The Court stated that the great size of the medical group's business in California was a persuading factor in finding the second and third restrictions to have a substantial effect on the physician's medical practice. Settlement agreements that contain overly expansive language or language that is too aggressive can give courts a reason to invalidate the agreements in their entirety if they offend Section 16600 and impose an unlawful restraint on trade. Having a settlement agreement go awry for this reason is sure to give employers and businesses a coronary as it will inevitably lead to the incursion of additional legal fees and time devoted to resolving a legal battle that could have been avoided by a more carefully crafted settlement agreement.