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One Minute Memo®

Physician Noncompetition Agreements May Be Challenged More Often After Recent Appellate Decision

A recent appellate decision out of the Beaumont Court of Appeals may throw a new wrinkle into Texas's ever-evolving law on physician noncompetition agreements.

In Texas, physician noncompetition agreements must contain buyout provisions to be enforceable. That is, the physician must be allowed to buy his or her way out of the geographical and temporal restrictions the noncompetition agreement imposes. This requirement is unique to physicians and mandated by statute. As a practical matter, large buyout amounts have traditionally kept physicians from violating their agreements.

Historically, many practitioners and legal scholars have read the statute to require that the buyout clause do one of two things: (1) recite a specific payment amount; or (2) provide that an arbitrator will determine the buyout number. The working theory among many practitioners has been that, if the parties choose the former option, the courts will enforce the agreed-upon amount. The Court of Appeals in Beaumont recently interpreted the statute differently.

In *Sadler Clinic Association, P.A. v. Hart*, 2013 WL 2631482 (Tex. App.– Beaumont 2013), the court held that, even if the agreement provides a specific buyout amount and does not provide for arbitration, courts may nonetheless order the parties to arbitrate the amount if the physician claims the amount is not "reasonable" at the time he or she departs. In so holding, the Court "presume[d] that the parties contracted with knowledge of the statute's arbitration provision concerning the price," and used that as a basis to allow arbitration.

This new decision may result in some physicians violating their noncompetition agreements and litigating rather than abiding by the agreement due to a large buyout provision. Further complicating the situation is the likelihood that agreements currently used by some hospitals and physician associations omit one or more statutorily-required provisions simply because they have been handed down over the years without being updated. Accordingly, many physician contracts in Texas are likely on shaky ground. Entities contracting with physicians should therefore be especially careful that their noncompetition agreements meet all the statutory requirements and comply with recent case law.

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