

Non-Competition Agreement: Nurses Went To Work For Another Home-Health Agency.

As a general rule, a nurse who signs a non-competition agreement with a particular employer must abide by the agreement with respect to work activities after employment with that employer.

An employee who has signed a valid non-competition agreement cannot solicit the former employer's clients and cannot use confidential information or trade secrets belonging to the former employer in professional activities later on.

Non-Competition Agreement Not Binding In This Case

The Superior Court of Connecticut noted that the home health nurses in this case contacted clients with whom they had been working with their former employer and got the clients to switch over to the new agency for whom the nurses had gone to work. Ordinarily that would be a clear violation of a non-competition agreement which could subject the nurses to a court injunction and a lawsuit for damages for breach of contract.

However, the non-competition agreement in this case was not binding. It was contained in the previous employer's employee handbook, which, for the employer's protection, had been denominated as not creating a binding employment contract between employer and employee.

Confidential Information

Patient's charts in the possession of the former employer are confidential information and may not be removed when an employee leaves.

However, the court pointed out that the same information in the charts is also in the hands of the patients, their physicians and other caregivers such as nursing homes, therapists and social workers.

Patient files from these other sources may be used in patient care after the patient has switched to another home-health agency without violating any right of a former agency to claim that its patient files are proprietary. **Priority Care, Inc. v. Gentiva Health Services, Inc.**, 2005 WL 246711 (Conn. Super., January 7, 2005).

When nurses leave one home health agency and go to work for another, a non-competition agreement, if there is one, will not allow:

Removing confidential patient files;

Using confidential information belonging to a former employer to further the business interests of another employer;

Soliciting clients of the former employer to switch over to the new employer;

Soliciting employees of the former employer to leave and come to work for another employer.

A non-competition agreement can only apply to the prior employer's immediate geographic area and can last only a short time, i.e., one or two years.

In this case the catch is that the non-competition agreement was part of the former employer's employee handbook.

To protect the former employer from a former employee's post-termination breach-of-contract suit there was the usual disclaimer that the employee handbook is not a binding employment contract.

SUPERIOR COURT OF CONNECTICUT
January 7, 2005

Non-Competition Agreement: Old Employer Entitled To Nominal Damages.

Two LPN's signed contracts as outside independent contractors with a home-health agency to provide in-home services to the agency's clients.

Their contracts contained non-competition clauses which prohibited them from entering into a business relationship with any client of the agency for two years after the termination of their independent-contractor relationship.

The independent-contractor relationship itself was at-will, that is, it could be terminated by either side at any time for any reason.

The nurses quit, signed on as independent contractors with another agency, took their clients with them and continued caring for them.

The nurses did solicit business from home-health clients whom they had cared for while employed by their former employer.

That is a violation of the two-year non-competition agreement.

COURT OF APPEALS OF MICHIGAN
February 1, 2005

The Court of Appeals of Michigan ruled the nurses did commit breach of contract.

However, the home-health clients' relationship with their prior agency was also at-will. The clients had no binding obligation to remain with the first agency. It was only speculative how long that relationship would have lasted even if the nurses had not illegally solicited them to switch to the new agency, drastically reducing the nurses' liability for damages. **Health Call of Detroit v. Atrium Home & Health Care Services, Inc.**, ___ N.W. 2d ___, 2005 WL 240772 (Mich. App., February 1, 2005).