

Re: **In Landmark New Jersey Case, Court Enforces 30-mile Restrictive Covenants Against Physician**

Dear Sir or Madam:

A recent court case concerning a restrictive covenant in a physician employment agreement sheds light on New Jersey courts' willingness to enforce non-competition clauses. On December 29, 2003, the Superior Court of New Jersey, Appellate Division, delivered an opinion that granted the employer-plaintiff's request for a preliminary injunction to enjoin the physician-defendant from practicing medicine in violation of a thirty-mile restrictive covenant contained in the physician's employment agreement. This is the largest radius that has ever been enforced in a published opinion against a physician in New Jersey. The facts of the case shed light on those factors that led to the court's decision.

In December 1994, the physician-defendant, Dr. More, a neurosurgeon, entered into an employment agreement with JFK Medical Center (hereinafter referred to as "JFK"). The initial agreement contained a restrictive covenant that prohibited Dr. More from practicing neurosurgery within a thirty-mile radius of JFK. Subsequent renewals of the agreement contained a restrictive covenant that prohibited Dr. More from practicing *medicine* within a thirty-mile radius of JFK. The agreement also contained language that acknowledged the reasonableness of the post-employment restraints and that JFK had the right to seek injunctive relief to enforce the restraints. On July 17, 2001, Dr. More submitted a letter of resignation from JFK's employment effective July 17, 2002. On July 22, 2002, Dr. More joined Neurosurgical Associates at Park Avenue ("NAPA"), which was located approximately five miles from JFK. Subsequently, Dr. More obtained medical staff privileges at Somerset Medical Center, which is also within a thirty-mile radius of JFK.

Some procedural background is helpful to an understanding of the outcome of this case. In November 2002, the Chancery Division denied JFK's application to enjoin Dr. More from practicing at NAPA and JFK's motion to appeal was denied by the Appellate Division in January 2003. In March, 2003, the Supreme Court granted JFK's motion for leave to appeal and the case was remanded to the Appellate Division. On December 29, 2003, the Appellate Division reversed the Chancery Division's decision (thus, granting the preliminary injunctive relief) and remanded the case to the trial court for further proceedings. Approximately seventeen months passed between Dr. More's commencement of employment with NAPA and the delivery of injunctive relief.

The court granted the preliminary injunctive relief and cited several reasons for its decision, including:

- Dr. More could have found work outside the geographically restricted area;
- Because Dr. More initiated his termination of employment with JFK, any hardship resulting from enforcement of the restrictive covenant was self-induced;
- Because it is reasonable that a medical specialty such as neurosurgery would involve a need for a longer term of protection for an employer, the two year restriction was reasonable;
- Because patients travel thirty miles or more to seek specialized care, the thirty mile radius was reasonable;
- Dr. More's practice of neurosurgery with NAPA competed with JFK; and
- Enforcement of the restrictive covenant would not be injurious to the public interest.

The injunction prohibits Dr. More from: (i) engaging in the practice of neurosurgery or any of its branches (not medicine generally) within a thirty-mile radius of JFK's headquarters in Edison; (ii) inducing any patients of JFK to patronize any professional health care provider other than JFK; (iii) accepting or soliciting referrals of patients from any entity or person with whom Dr. More had a business relationship or from whom he had received such referrals; (iv) requesting or advising any patients of JFK to withdraw, curtail or cancel patients' business with JFK; and (v) disclosing to any other person, firm, or corporation the names or addresses of any patients of plaintiff. The case was remanded to the trial court for further proceedings, including the determination of any issues with respect to the enforcement of the injunction and the duration of the restraints.

To both employees and employers, this case is a reminder that restrictive covenants, if properly drafted, are enforceable under certain circumstances. If you are an employer, you should carefully tailor your restrictive covenants based on the decision in the Dr. More case. If you are an employee, you should seriously consider the risks associated with signing an agreement that contains a restrictive covenant. If you have any questions about restrictive covenants or any other issues related to the employment of health care providers, please feel free to contact our office.