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PHYSICIANS PROVIDING SPECIALIZED CARE BEWARE NEW JERSEY APPELLATE DIVISION ENFORCES ONE OF THE BROADEST PHYSICIAN RESTRICTIONS EVER -- A 30 MILE, 2 YEAR RESTRICTIVE COVENANT

Non-compete restrictions between physicians have been enforceable as long as they comply with the reasonableness test devised by the New Jersey Supreme Court in the 1978 decision in Karlin v. Weinberg, 77 N.J. 408, 1978. Under that decision, the covenant must (1) uphold the legitimate interest of the employer in protecting its relationships with patients, (2) not impose undue hardship on the employee, and (3) be beneficial to the public interest. In Karlin, the New Jersey Supreme Court in a 4-3 vote, enforced a five (5) year, ten (10) mile restrictive covenant between dermatologists.

The continued viability of that 1978 decision has been the subject of recent debate for a number of reasons. First, the decision's reliance on strong, traditional patient relationships came prior to managed care and its effect on patient's choice of medical service providers, which now tends to be dictated by health care insurers who require use of doctors within the carrier's network. Second, on July 15, 2002, the American Medical Association adopted policy E-9.02 which voiced opposition to restrictive covenants in the medical profession on the basis that the covenants "disrupt continuity of care and potentially deprive the public of medical services."

Third, in June 2003, an Atlantic County Judge ruled that a restrictive covenant barring a physician from practicing within fifteen (15) miles of her former

employer's office was an undue hardship and refused to enforce the agreement.

The recent debate about Karlin may now end as the result of the New Jersey Appellate Division's decision on December 29, 2003 in The Community Hospital Group, Inc. t/a JFK Medical Center v. Jay More, M.D., Docket No. A-3861-02T3 in which the court enforced a thirty (30) mile, two (2) year post-employment restrictive covenant between the plaintiff, the Community Hospital Group, Inc. t/a JFK Medical Center ("JFK") and its former employee, Jay More, M.D. ("More"). The thirty (30) mile restriction is the broadest restrictive covenant ever enforced between physicians in a reported decision in New Jersey and the Appellate Division used this case to reaffirm the principles first enunciated in 1978.

There are a number of key facts in the decision which physicians should be aware. First, JFK had sought to develop an extensive clinical neurological program devoting approximately \$14 million to its development since 1992, including \$200,000 annually on advertising and promotion.

Second, JFK hired Dr. More as a neurosurgeon, immediately upon completion of his residency at Mt. Sinai Hospital in New York. Dr. More did not have any practice or patient base prior to his employment at JFK,

and, as such, he essentially built his substantial patient base during his eight years at the hospital. Then, when he deemed appropriate, Dr. More decided to venture out on his own and compete with JFK.

Third, the court was persuaded by the fact that More was employed as a neurosurgeon, a specialist; that patients were shown to routinely travel more than thirty (30) miles to seek specialized care such as neurosurgery; and that New Jersey is a state characterized by great mobility as demonstrated by the fact that seventeen percent (17%) of JFK's patients reside outside the thirty (30) mile radius of JFK's current location.

The JFK v. More decision ends for now the debate about the enforceability of non-compete agreements between physicians, but raises interesting issues for physicians who are asked to draft and/or sign such restrictive covenants.

The members of Archer & Greiner's Employment Competition and Information Protection Group and Labor and Employment Department are ready to discuss the implications of this decision. To schedule a consultation or in-house seminar for your HR professionals, please contact Karen Kruza at kkruza@archerlaw.com, or Robert T. Egan, Esquire, Chair of the Employment Competition Group at 856-354-3079.