



## Labor & Employment Client Advisory

### Restrictive Covenants for Physicians Still Valid

*New Jersey Supreme Court Issues Two Rulings  
Reaffirming Non-Compete Agreements*

April 2005

On April 5, 2005, the New Jersey Supreme Court issued two opinions, *Community Hospital Group v. More*, and *Piersen v. Medical Health Centers*, which reaffirm longstanding New Jersey precedent that post-employment restrictive covenants between physicians are not *per se* void and unenforceable.

The *More* decision involved a dispute between the employer medical center and a neurosurgeon, who had been employed for eight years, and, during that time, had signed three different agreements with a restrictive covenant that prohibited his practice of neurosurgery for two years post-employment within thirty miles of the employing medical center. Each agreement contained affirmations by the medical center and the physician that the restrictions were reasonable. The neurosurgeon voluntarily left the medical center's employ, and, foregoing offers of employment outside the thirty mile restricted zone, instead took employment with a group that covered neurosurgery at a competing medical center thirteen miles away. He also removed patient demographic information, solicited patients and successfully took part of his patient base to his new employment.

On appeal from the Appellate Division's entry of injunctive relief enforcing the covenant, the Supreme Court rejected the argument that physician restrictive covenants are against public policy, and affirmed that the restrictive covenant in question protected legitimate interests of the medical center (confidential information, patient and referral bases, and investment in the training of physicians). The Court agreed that the two year time frame of the covenant was reasonable, and found that the

covenant did not impose undue personal hardship on the physician (since he voluntarily left and had available employment outside the restricted zone). However, the court reversed the Appellate Division's judgment, finding that the thirty mile restricted zone was too broad. Focusing on hardship to the public, the Court cited evidence in the record of a paucity of neurosurgery coverage at the competing medical center, with consequent lack of access to emergency neurosurgery care by persons who relied on the competing center for their medical care. The Court also referenced evidence that there were patients in the vicinity of the competing medical center who could not travel the length of the restricted zone to seek ongoing neurosurgery care from Dr. More. The Court sent the matter back to the trial court to determine the precise geographic limit that would be reasonable and preserved the medical center's right to seek damages for violations that had occurred within the "blue penciled" zone.

*Piersen* involved a two year, twelve mile restrictive covenant which had been arbitrated, resulting in a monetary award in favor of the employer against the departing physician who had violated the covenant. The sole issue before the Court was whether the covenant was *per se* unreasonable and against public policy. Consistent with its decision in *More*, the Supreme Court held that the restrictive covenant was not *per se* unreasonable or void as against public policy.

*More* and *Piersen* end the ongoing debate over whether physician restrictive covenants should be permitted in New Jersey. Enforcement of these covenants

#### ARCHER & GREINER LABOR & EMPLOYMENT GROUP ATTORNEYS

Gary J. Lesneski, Chair  
Frederick J. Rohloff  
Neal L. Schonhaut  
Joel Schneider  
John C. Connell  
Peter L. Frattarelli  
John P. Quirke  
David A. Rapuano  
Susan S. Hodges  
Tracy A. Wolak  
Vanessa A. Worm  
Sarah Middleton  
Alexander Nemiroff  
Douglas Diaz

will continue to be a case-by-case determination, heavily dependent on the subjective balancing of many factors. The upshot of these two decisions is that health systems, medical groups and other entities employing physicians will still need to ponder what time and geographic restrictions are reasonable under the circumstances when drafting these provisions, regardless of whether the agreement says the restrictions are reasonable. And, our courts will continue to evaluate equitable factors bearing on enforcement, including the circumstances of the physician's departure, the potential for new employment by the departing physician, and the public interest in access to care, taking into account the particular specialty and demographics of physician representation in the relevant market.

For more information on the Supreme Court's decision in *More* and *Piersen* and its implications upon your practice, please contact Gary J. Lesneski, Esq. at (856) 795-2121.