

Health Law Bulletin

April 2007

Physician Restrictive Covenants Upheld by the Illinois Supreme Court

In a victory for Vedder Price clients St. John Heart Clinic, S.C. of Chicago and its founder, Dr. John Monteverde, the Illinois Supreme Court affirmed the enforceability of physician restrictive covenants. Upholding the First District Appellate Court's reversal of the denial of a motion for preliminary injunction in the matter of *Jyoti Mohanty, M.D. and Raghu Ramadurai, M.D. v. St. John Heart Clinic, S.C. and John Monteverde, M.D.*, No. 101251, the Illinois Supreme Court's opinion of December 21, 2006 was its first examination of the enforceability of physician restrictive covenants in more than forty years. During that time, changes in the medical practice environment, the Illinois Supreme Court's prohibition on similar covenants among lawyers, and the opinions of lower Illinois courts, as well as their treatment in other jurisdictions, had led some to question the continued viability of physician restrictive covenants in Illinois.

Drs. Mohanty and Ramadurai, both employees of St. John Heart Clinic, resigned and brought actions for declaratory judgment, seeking to void restrictive covenants within their employment contracts. After temporary restraining orders were entered against the physicians, the Circuit Court denied St. John's motion for a preliminary injunction on the ground that a restriction against the practice of medicine was overbroad where the physicians in question were primarily engaged in the practice of cardiology. The Appellate Court reversed, holding the covenants reasonable in scope and enforceable. *Mohanty v. St. John Heart Clinic, S.C.*, 358 Ill. App. 3d 902, 832 N.E.2d 940 (1st Dist. 2005). The former employees appealed.

Drs. Mohanty and Ramadurai offered three grounds for reversal of the Appellate Court's instruction that a preliminary injunction be entered against them: (1) all restrictive covenants in physician employment contracts should be held void as against public policy; (2) the employer's alleged prior breach of contract relieved them from their obligations under their contracts; and (3) the covenants were overbroad in scope.

In support of their argument that all physician restrictive covenants should be deemed void as against public policy, Drs. Mohanty and Ramadurai relied upon two grounds. First, they argued that *Dowd & Dowd v. Gleason*, 181 Ill. 2d 460 (1998), wherein the Court invalidated restrictive covenants among attorneys, should be applied to physicians. Second, they argued that the Court should adopt the American Medical Association's published position against physician restrictive covenants. The Supreme Court rejected both arguments, finding that whereas the Illinois Rules of Professional Conduct provided the Court in *Dowd* with a clear expression of Illinois' public policy upon which to invalidate attorney restrictive covenants, the AMA's nonbinding advisory opinion, which provides that physician covenants should be reasonable in scope, was neither a binding expression of public policy nor substantially different from the reasonableness inquiry traditionally utilized by Illinois courts in examining restrictive covenants. The Court concluded that any change in Illinois law to prohibit physician restrictive covenants must emanate from the legislature rather than the courts.

The Court also rejected appellants' claim that a prior breach of contract by their employer negated their own obligations to perform. Relying principally on the record evidence provided by St. John's Medicare billing expert, the Court concluded that no material breach of contract by St. John was established, and thus the employees' obligations under the contract remained in full force and effect.

Lastly, the Court rejected appellants' contention that the covenants were overbroad. Observing that the temporal and geographic limitations imposed on the former employees fell well within the range of established precedent, the Court held that the physicians' primary specialty, cardiology, was "inextricably intertwined with the practice of medicine." A restriction against the practice of medicine, therefore, was not greater than necessary to protect St. John's interests.

Although opinion is divided within the medical community over the fairness and value of physician restrictive covenants, the Court's lengthy opinion is of significant value, in that it provides clarity and certainty to medical providers in their future business and contractual dealings. Rehearing was denied in this case by the Supreme Court on March 26, 2007.

Vedder Price shareholders Richard Sanders and Diane Kehl, and associate Jeffery Heftman represented St. John Heart Clinic and Dr. John Monteverde.

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About Vedder Price

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