

HEALTH CARE PROVIDER ALERT

8/2/18

Hospital Based Medical Group Lacks Protectable Interest in Enforcing Restrictive Covenant Once Group Stops Performing Services at Hospital

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Many hospital-based medical practitioners have restrictive covenant agreements that, upon the termination of their employment with their employers, specifically preclude these practitioners from performing services at the hospitals at which they were stationed or within a certain mileage radius from those hospitals. But, does an employer have a protectable interest in enforcing those covenants against the practitioners if the employer itself has lost the ability to provide services at those hospitals? In the recent decision of [Great Lakes Anesthesia, P.C. v. O'Bryan, et al.](#), 27A02-1708-CT-1956 (Apr. 2018), the Court of Appeals of Indiana answered this question by saying no. In so ruling, the court affirmed a trial court decision that had refused to enforce the restrictive covenants against the practitioners.

The practitioners at issue in the case were Kyle and Megan O'Bryan, two married CRNAs who were hired by Great Lakes Anesthesia ("Great Lakes") to provide nurse-anesthesia services at Marion General Hospital in Marion, Indiana. The O'Bryans' employment agreements with Great Lakes contained restrictive covenants providing that if the O'Bryans terminated their employment other than for cause, for 24 months after the termination they could not provide anesthesia services at the specific facilities at which they had been assigned by Great Lakes, or at any other facilities within a 25-mile radius of their assigned facilities. In other words, if the O'Bryans left Great Lakes' employ, their agreements precluded them from continuing to provide services at Marion.

At the time Great Lakes hired the O'Bryans, Great Lakes had a contract that gave it the exclusive right to staff Marion with Great Lakes' anesthesiologists and CRNAs. However, about six months after the O'Bryans began working at Marion, Great Lakes and Marion got into a contract dispute. As a result of this dispute, Great Lakes gave notice to Marion that it would cease providing services there effective March 31, 2017. Marion subsequently entered into an agreement with a different anesthesia group for that group to begin providing services at Marion effective April 1. When the O'Bryans learned of Great Lakes' dispute with Marion, they asked Great Lakes to release them from their employment agreements. Great Lakes refused. Great Lakes also rejected the new anesthesia group's offer to buy out the O'Bryan's employment agreements. Great Lakes then attempted to place the O'Bryans at a hospital greater than a thirty-minute drive from their home. The O'Bryans responded by tendering their immediate resignations from Great Lakes and by remaining at Marion as employees of the new anesthesia group effective April 1, 2017.

A lawsuit ensued, through which Great Lakes moved for a preliminary injunction against the O'Bryans to stop them from continuing to provide anesthesia services at Marion. After hearing evidence, the trial court denied Great Lakes' motion. The Indiana Court of Appeals affirmed that ruling.

At the outset, the Court noted that restrictive covenants serve to restrain trade and are disfavored by the law. Thus, according to the Court, covenants are strictly construed against employers and will only be enforced if reasonable. In determining the reasonableness of a covenant, the Court noted that it must "first examine whether the employer has asserted a legitimate interest that may be protected by a covenant." In this regard, the Court noted that before a covenant will be enforced, the employer must first prove that by violating the covenant the employee gained a unique competitive advantage or ability to harm the employer. Applying these standards to the facts at hand, the Court held that because Great Lakes had ceased providing anesthesia services at Marion, it lost any protectable interest it previously had in enforcing the covenants against the O'Bryans. In essence, there was no evidence that Great Lakes was losing patients since Great Lakes was no longer providing services at Marion.

To counter this finding, Great Lakes tried to equate CRNAs like the O'Bryans to "salesmen" whose "good will" through their performance of good anesthesia services might help grow Great Lakes' and Marion's business. But, the Court rejected this argument by noting that, in reality, CRNAs are expected to provide good service that will allow a hospital to maintain its business. As the court found, there was no evidence "that the O'Bryans were hired to *increase* a customer base." Accordingly, the Court held that the O'Bryans did not gain any competitive advantage over Great Lakes by continuing to provide services at Marion. Hence, Great Lakes had no protectable interest and it could not enforce the covenants against the O'Bryans.

Many medical practitioners believe that simply because they have agreed to restrictive covenants, the covenants will be enforced against them. That is not true. Indeed, the Great Lakes decision is important because it reminds medical practitioners that, among other things, an employer has the burden of establishing a protectable interest. Absent proof of a protectable interest, an employer will not be able to enforce its restrictive covenants against its former employees.

For our medical practitioners and practitioner groups, Roetzel attorneys provide advice on restrictive covenants and other provisions routinely contained in employment agreements. If you have any questions regarding this area of the law, please do not hesitate in contacting us.

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