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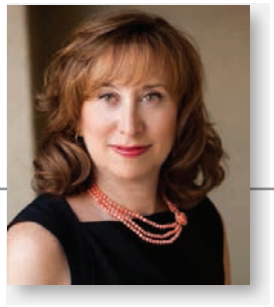

"No-Employment" Provision Might Void a Settlement Agreement in California

April 11, 2015

A new Ninth Circuit case holds that a settlement agreement with a non-compete provision that amounts to a substantial restraint on engaging in a profession may be void. In Golden v. California Emergency Physicians Medical Group, et al., (No. 12-16514, April 8, 2015), a physician's settlement agreement with his former employer included a provision that the physician waive his rights to employment with the defendant or at any facility that the defendant may own or with which it may contract in the future.

The physician decided not to sign the agreement and challenged its validity under California's non-competition ban in Business & Professions Code Section 16600, which states:

> Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

The District Court ruled against the physician and ordered that the settlement agreement be enforced because the no-employment provision did not constitute a covenant not to compete (which would trigger the statutory ban). The Ninth Circuit reversed, finding that the District Court abused its discretion in limiting its inquiry to whether the no-employment provision constituted a covenant not to compete:

> At the very least, we have no reason to believe that the State has drawn section 16600 simply to prohibit "covenants not to compete" and not also other contractual restraints on professional practice.

The Court set forth its view of the correct standard for analysis:

> In determining a contract's validity under section 16600, therefore, the court should direct its inquiry according to the actual statutory language: whether the challenged provision "restrain[s anyone] from engaging in a lawful profession, trade, or business of any kind." Cal. Bus. & Prof. Code § 16600. This prohibition extends to any "restraint of a substantial character," no matter its form or scope. [Citation omitted]

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The Court of Appeals declined to decide the merits of Dr. Golden's claim because of the limited record on appeal. It remanded the case with the direction that "the district court should determine in the first instance whether the no-employment provision constitutes a restraint of a substantial character to Dr. Golden's medical practice." If so, then the settlement agreement would be void.

This decision indicates that "no re-hire" or "no-employment" provisions commonly seen in settlement agreements in employment disputes will have to be based on an analysis of the employee's banned employment opportunities within a specific industry. This suggests that settlement terms restricting former employees' mobility will become even more difficult to enforce, and may even void the agreement[1] in its entirety.

A copy of the decision can be found here.

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