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Overreach Voids Settlement Agreement

Negotiating the end of a partnership or employee/employer relationship can be challenging. Both sides want an agreement that allows the parties to move on without future interference. But aggressive terms that push too hard to avoid crossing paths in the future can invalidate the entire settlement agreement.

In *Golden v. California Emergency Physicians Medical Group* (9th Cir. 2018) 896 F.3d 1018, the U.S. Court of Appeals for the Ninth Circuit held that a settlement agreement between a physician and his former employer violated the California Business and Professions Code because the “no re-hire” provision of the agreement placed a “restraint of a substantial character” on the physician’s medical practice.

CEP partners with 2000 physicians to staff emergency rooms and medical facilities. Golden worked for CEP as an emergency room physician for three years. CEP fired him, and he sued for discrimination. The parties reached an oral agreement just before trial. When the settlement agreement was later reduced to writing, Golden refused to sign it, claiming that the “no re-hire” clause of the agreement violated California Business and Professions Code section 16600, which prohibits contracts “by which anyone is restrained from engaging in a lawful profession, trade or business of any kind.”

The no re-hire provision impeded Golden from practicing medicine at facilities owned or operated by CEP, or for any employers that have contracts with CEP, and allowed CEP to fire Golden from any facility where CEP later contracts or acquires rights, even if not owned by CEP. Golden refused to sign the agreement, and his attorney moved to enforce it to collect his fee. The district court ordered Golden to sign, reasoning that because the no re-hire provision would not prevent him from competing with CEP, there was no restraint on his medical practice, and section 16600 did not apply. Golden appealed to the Ninth Circuit.

The Ninth Circuit reversed and remanded. Section 16600 applies not only to noncompetition agreements but also to any contractual provision that places a “restraint of a substantial character” on a person’s ability to practice a profession, trade, or business. The court found that the no re-hire provision was valid to bar Golden from employment at facilities CEP owned or managed, but was invalid to prevent him from working for third-party facilities who simply have contracts with CEP, and for CEP to terminate Golden from facilities it does not own. These provisions substantially restrained Golden’s profession, and rendered the entire agreement void.

This case serves as a reminder that if the circumstances require a “term sheet,” make it as definite as possible. If a longer final agreement is to follow, comport with the term sheet constraints and don’t overreach.