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The Long Goodbye

When the employee/employer relationship is severed, is an agreement that the employee can never work for the employer in the future enforceable? Maybe not, according to *Golden v. California Emergency Physicians Medical Group* (9th Cir. 2015) 782 F.3d 1083.

Dr. Golden is an emergency-room doctor formerly affiliated with a large physician's medical group, California Emergency Physicians (CEP). Dr. Golden sued CEP regarding his loss of staff membership at one of CEP's facilities, alleging racial discrimination. Prior to trial, the parties orally agreed in open court to settle the case. The terms were that in return for a substantial monetary amount, Dr. Golden agreed to dismiss the action, waive his claims against CEP, and "waive any and all rights to employment with CEP or at any facility that CEP may own or with which it may contract in the future."

Dr. Golden later changed his mind, and refused to sign the written agreement memorializing the settlement, in part because of its "no-employment provision." The district court ordered the settlement be enforced, and dismissed the case. Dr. Golden appealed, arguing that the no-employment provision violated California law as a contract restraining the lawful practice of a profession. (Cal. Bus. & Prof. Code §16600.) Since the no-employment provision was a material term of the agreement, Dr. Golden argued, the entire settlement agreement is void and his lawsuit should be reinstated.

The Ninth Circuit reversed and remanded, concluding section 16600 is not limited to standard "covenants not to compete," and the district court should determine whether the no-employment provision constituted a restriction of "substantial character" on Dr. Golden's medical practice.

This case illustrates how a seemingly straightforward term governing the future relationship of the parties can possibly unravel an entire settlement agreement. Was CEP's share of the market so great that being dismissed by them impairs Dr. Golden's ability to practice his profession? If so, would that portion of the settlement agreement, in the words of section 16600, be "to that extent void?" Further fact-finding in the district court will tell.