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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

A medical practice evidently thought that you cannot have too much of a good thing and believed that a restrictive covenant was a “good thing” – but- in the process overstepped the boundaries of what would be deemed acceptable by a court.

A physician had been hired to perform surgery- including weight loss- by the plaintiff. Physician attempted to negotiate the terms of the restriction but was denied. The restriction contained in the contract would bar one from practicing within 10 miles of any of the seven offices of the plaintiff or of a hospital wherein the practice had privileges. One of the hospitals was located in Rockville Center and thus the employee was effectively barred from a great portion of the Greater Metropolitan area for two years after employment had ended.

Physician was hired by a hospital within the 10 mile zone and suit ensued. The trial court dismissed the case without trial on the grounds that the restriction was unenforceable. Appeal was taken to the Appellate Division and the language of the court, as well as the philosophy expressed, is worth noting.

The court stated that restrictive covenants ARE NOT FAVORED (emphasis supplied) and will only be enforced if they are reasonable and needed to protect the legitimate business interests of the employer. In addition the restriction must not be harmful to the public nor unreasonably burdensome to the party affected.

In the case before it the court ruled that the restriction, if enforced, would have prevented one from practicing in the Greater Metropolitan area- and- employer failed to show a necessity to protect its interests.

During oral argument the employer urged that the restriction be modified instead of being stricken in its entirety. In rejecting this proposal the Court found that there was an anti-competitive aspect to the restriction rather than a need to protect the legitimate business interests of the party seeking to enforce the covenant.

Once again it is clear that any dispute concerning a restrictive covenant is going to be fact specific but the particular burden will fall upon the party attempting enforcement despite the written words of the contract which has been signed.

Respectfully submitted,

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