

Doctor Non-Solicitation Agreement Not Supported by Legitimate Business Interest

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Lawyers and clients alike often believe that it is easier to enforce a non-solicitation agreement than a non-competition agreement. Sometimes, that's true. However, that does not mean that companies can enforce a non-solicitation agreement without demonstrating a legitimate business interest for doing so. The recent Illinois Appellate Court decision in [*Gastroenterology Consultants of the North Shore, S.C. v. Meiselman*](#) (2013 Il. App. 1st 123672) highlights this point.

In that case, Mick Meiselman, MD, along with three other physicians, formed a corporation, Gastroenterology Consultants ("GC"), in 1996. In 2011, Meiselman left GC to work for NorthShore University HealthSystem Medical Group. In his new position, Meiselman treated any patient who sought out his services, including patients he treated while working for GC. GC sued, claiming that Meiselman's conduct violated a restrictive covenant into which Meiselman had entered while employed by GC. The restrictive covenant included a provision not to solicit any of GC's patients for a competitor located within 15 miles of GC's offices for three years after separating employment, except in situations involving a genuine emergency. GC requested that the court issue a preliminary injunction, but the trial court refused after determining that GC had failed to show (among other things) that it had a legitimate business interest in enforcing Meiselman's agreement.

The appellate court affirmed. The appellate court observed that, before Meiselman helped form GC, he had practiced medicine for approximately 10 years in the same geographic region later serviced by GC and treated thousands of patients there. Additionally, after Meiselman formed GC, he continued treating patients (and accepting referrals from physicians) with whom he had developed relationships prior to affiliating with GC. Furthermore, the appellate court devoted a large portion of its opinion to explaining that Meiselman's practice at GC operated quite independently from GC itself, pointing out that:

- GC did not introduce Meiselman to his patients or physician-referral sources;
- physicians would refer patients to Meiselman individually rather than to GC generally;

- GC did not advertise, promote, or market Meiselman's practice;
- Meiselman maintained his own office with its own telephone number;
- Meiselman billed for his services and his compensation was dependent on the revenue that he personally generated rather than GC's revenue; and
- GC was not materially involved in other aspects of Meiselman's practice aside from providing administrative support.

Under those circumstances, the appellate court agreed with the trial court that GC did not have a legitimate business interest in enforcing the agreement.

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