

# Nurse Practitioner: Non-Competition Clause Is Enforceable, Court Injunction Validated.

The Missouri Court of Appeals went into great detail to express a high regard for the importance of nurse practitioners in basic primary care. The nurse practitioner in this case had established herself as a highly respected, relatively autonomous and seemingly independent provider whom several thousand persons had come to depend on for their day-to-day health care needs. But that made it all the more critical to her former employer that she restrict herself from going into direct competition, the court ruled.

A former employer trying to enforce a non-competition clause in an employment contract with a former employee has to prove the former employee freely agreed to it and that the employee knew what he or she was signing. It has to be part of the negotiations before employment is accepted rather than something handed down to an existing employee. And the former employer must convince the court the terms of the agreement are reasonable.

To be reasonable a non-competition clause must have been written to protect a legitimate business interest the employer already had when it was signed and must be written to protect the employer's business interests only in a limited and well-defined geographical area where the employer's presence is already established, and it can last only for a specific and limited time, generally not to exceed one year.

Non-competition clauses in employment contracts turn the normal rules of contract law upside down. Normally the person being sued for breach of contract has to prove he or she did not agree to the contract or did not know what he or she was signing or that the contract is unreasonable.

Non-competition clauses are different because a valid non-competition clause gets specific enforcement, that is, a court can order someone immediately to stop violating a non-competition clause. That is not true with contracts in general. The usual remedy for breach of contract is payment of damages, and only after the fact.

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***A healthcare facility has a legitimate interest in preserving its patient base, as income from patient billings is its only source of operating revenue.***

***Like other businesses, a medical clinic can use a non-competition agreement to protect its legitimate business interests against competition from a current or former employee.***

***A non-competition agreement, if it can pass the court's scrutiny, is one of the limited types of special legal contracts that calls for specific enforcement. That means a court can issue an injunction requiring a former employee who signed a non-competition agreement to cease and desist immediately and for a specific time from competing with a former employer.***

***This nurse practitioner quit over a salary dispute and right away started practicing in another clinic less than fifty miles away, in violation of the contract she signed before she started.***

***Her former employer had the right to a court order that she not practice as a nurse practitioner anywhere within a fifty mile radius for one year.***

MISSOURI COURT OF APPEALS, 1999.

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The court ruled this medical center's non-competition agreement with one of its nurse practitioners was legally binding and specifically enforceable.

The local court injunction was affirmed, prohibiting her from practicing as a nurse practitioner in a facility less than fifty miles from one of the medical center's satellite clinics she had started and where she worked as a nurse practitioner as a medical center employee.

She knew what was in the contract she signed. She acknowledged the non-competition clause was valid before she quit when she asked permission to take a temporary part-time assignment in a public prenatal clinic, the court pointed out.

If the employer breaks the employee's employment contract, as this medical center did not do in this court's judgment, the employee would be justified in turning around and ignoring the non-competition agreement.

Her contract with the medical center called for annual salary review but did not guarantee a specific percentage raise. The court said the medical center did not break the employment contract by tendering her the same three-percent raise other salaried employees got, even though she rejected it.

The non-competition clause prohibited the nurse practitioner from "engaging in the practice of nursing" within fifty miles for one year. That phrase meant she could not practice as a nurse practitioner. It did not mean she could not work as a staff nurse.

Her working as a nurse practitioner would be a threat to the medical center's legitimate interest in protecting its relationships with its existing patients. Her working as a staff nurse, however, even within fifty miles or sooner than one year, the court said, would not be a threat. Restricting her from staff-nurse work would also be unreasonable and unenforceable, the court said, irregardless of the language of the non-competition agreement. Washington County Memorial Hospital v. Sidebottom, 7 S.W. 3d 542 (Mo. App., 1999).