


MILLER STRATVERT
LAW OFFICES

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Max A. Jones
Joni L. Autrey

Of Counsel
Ranne B. Miller
William K. Stratvert
Deborah A. Solove
Gordon S. Little
Holly Agajanian
Lisa T. Mack

500 Marquette NW, Suite 1100
Albuquerque, NM 87102

Mailing Address:
P.O. Box 25687
Albuquerque, NM 87125-0687

Telephone:
(505) 842-1950
(800) 424-7585
Facsimile: (505) 243-4408

May 27, 2015

Via E-Mail

Mr. Randy Marshall
New Mexico Medical Society
rmarshall@nmms.org

Re: Non-Compete Bill

Dear Randy,

The following is the excerpt from the Non-Compete legislation setting forth the parameters for enforcement.

B. The provisions of this act apply to agreements, or renewals or extensions of agreements, executed on or after July 1, 2015.

This language suggests that an agreement executed before July 1, 2015 which is evergreen (not subject to renewal but remains in place for the period of employment) would not be covered by this Act. For example, if an employed physician signed an agreement in 2014 for a three year term, he would be subject to the non-compete contained in the contract. If a physician signed an agreement for an indefinite time frame (may occur when eventual partnership/shareholder status will be considered) he would also have to comply with a contractual non-compete. On the other hand, if an agreement is subject to a renewal or extension each year, which has to be signed off on by the parties yearly, it would be covered by the Act. If the physician terminates the pre July 1, 2015 agreement, he is still subject to the contractual non-compete which normally survives the contract termination date. The usual time frame is one or two years. Most employment contracts with non-competes contain a specific survival period to insure an understanding between the parties that the provision remains in place for the prescribed prohibition period.

This is a literal reading of the language.

Sincerely,



Deborah A. Solove

DAS:bad

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A PROFESSIONAL ASSOCIATION

ALBUQUERQUE
(505) 842-1950

FARMINGTON
(505) 326-4521

LAS CRUCES
(575) 523-2481

SANTA FE
(505) 989-9614