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Client Alert

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Georgia Court of Appeals Upholds Noncompete Clause in Physician Employment Contract

The Georgia Court of Appeals recently upheld the decision of a state trial court finding that Dr. Rami Azzouz and his firm, Bright Pediatrics PC, would have to abide by the noncompete provisions signed by Azzouz in his group practice employment contract with Prime Pediatrics PC (Prime). (Azzouz v. Prime Pediatrics PC, Ga. Ct. App., No A08A2340, March 12, 2009) In January 2004, Azzouz, a pediatrician, entered into the employment contract in question with Prime. In 2008, he announced his intention to leave the practice and formed Bright Pediatrics PC in the same town while still working for Prime. When Azzouz left Prime, he also took a record of all the patients he had cared for during his employment. Prime filed suit against Azzouz and his new firm, alleging breach of contract, and was granted an interlocutory injunction against Azzouz and his company by the trial court which found that the duration, geographic territory, and scope limitations on Azzouz's employment were reasonable.

The Court of Appeals upheld the trial court's finding, and, in its opinion found that the terms of the employment contract Azzouz signed with Prime were lawful. The relevant noncompete provision prohibits Azzouz from practicing in the same area of specialty for two years in the five-county area surrounding Dalton, Georgia, where Prime's practice is located. Specifically, the contract precluded Azzouz from maintaining pediatric privileges in any area hospital, advertising in any form in the area, including mailings to patients of Prime within the area, and maintaining an office in the area.

Although Azzouz claimed at appeal that the provisions were ambiguous, overly broad, and an unenforceable restraint on trade, the Court of Appeals disagreed with his contention, finding that the contract clearly outlined all prohibited behavior and allows Azzouz to continue practicing pediatrics outside the area identified. While noting that parts of the noncompete provision were "not constructed perfectly" and "could have used some semicolons," the Court found that grammatical problems in contractual language may be disregarded in order to effectuate the intent of the parties. The Court also recognized the need to balance an employee's right to earn a living and the need for certainty about activities prohibited with an employer's interest in protecting itself from the unfair appropriation of its business and customer relationships.

Notably, the Court's decision is consistent with the ruling in Raiford v. Kramer, 231 Ga. 757 (1974) by the Georgia Supreme Court over three decades earlier. In that case, the Supreme Court upheld a similar noncompete clause. Both

cases involved restricting physicians from practicing in the same specialty area that was practiced during employment, for two years, in a five-county geographic territory where the employer's practice was located. In that sense, the Court of Appeal's decision in Azzouz serves as a present day reminder to physicians and their employers alike to be diligent in clearly expressing the intent of the parties in the employment agreements that they negotiate.

*Mr. Peterzell thanks Lanchi Nguyen who assisted significantly with the preparation of this article. Ms. Nguyen is a December graduate of Emory University School of Law and an employee of Arnall Golden Gregory LLP in our healthcare/life sciences practice. Ms. Nguyen also received a M.P.H. from Emory University. She took the Georgia Bar Examination in February and is awaiting her test results.