

Legal Issues When Leaving a Medical Practice: Navigating Non-Solicitation vs. Abandonment

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By Michael H. Cohen

In today's video, we talk more about what to do and what to do and NOT to do, if you're a physician who is leaving someone else's medical group, or medical practice, where you've been happily employed until you decide to no longer be employed there.

We've seen litigation scenarios played out between departing physicians as well as chiropractors on the one hand, and the medical groups, practices, and centers where they had been affiliated as employees or even co-founders on the other. Today, we'll just talk about the employment role. We've helped these physicians and chiropractors navigate their exit, whether they've been at a conventional medical practice, or in an integrative medicine center, functional medicine center, or health and wellness group of any other sort.

I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We've advised over a thousand healthcare industry clients on healthcare and FDA legal issues. These clients include physicians in all types of medical practices and healthcare centers, as well as chiropractors, nurses, dentists and many other practitioners. We've helped our clients navigate the legal landscape so they can avoid or at least mitigate the risk or severity of patient lawsuits, litigation from former medical employers, and, regulatory enforcement.

Recently, the common scenario came to light when a medical doctor left a practice, and, sent a postcard to his patients from the practice, letting them know where they could find him in his new practice. It sounds pretty innocuous, right?

The medical practice found out, and wrote the physician a demand letter, alleging that he had violated the non-solicitation clause in his employment agreement, which prohibited him from soliciting patients for up to a year following his exit from the medical practice.

The demand letter cited a breach of the employment agreement; HIPAA violations from accessing the medical records; and misappropriation of trade secrets. This is a common deadly combo that plaintiffs' lawyers will fire off to try to chill the departing MD and exact a six-figure settlement.

What's the best legal advice when you're hammered by plaintiff's demand letter? Again, these issues are best navigated at the START of the employment relationship, when all the goodwill is there and the parties still have their heads on their shoulders about how to work things out amicably, should the professional association not work out. Call it a business prenuptial, that's where we like to intervene.

The fact is that medical practices are highly competitive, and, former medical employers are likely to be zealous and jealous of attempts to take patients with you to your new medical practice. That's just a fact of life, just like these planes flying overhead.

If you download patient names and contact information before you go, this can be legally problematic – and, you’re also giving legal ammunition to your former employer even if you think you should have the right to do so.

Now bear in mind that your former employer has obligations too – both sides have a duty to not abandon patients. The ideal solution at this late stage is a communication from both the medical group and the departing doctor, that tells patients where the doctor is going and how that doctor could be reached in the future. A joint announcement is more neutral and it can help the departing physician ease the suspicion that they are trying to steal away, or in the words of your employment agreement “solicit”, the existing practice’s patients. A joint announcement also can help quell the concern that either or both are abandoning these patients. You don’t want to be involved in an ethical no-no.

Ideally, the medical practice will cooperate in transferring files of those patients that decide to migrate to the departing doctor (which could be you) at their new location. On the other hand, should those patients decide to stay with the medical practice, the medical practice will provide a list of alternative physicians at the practice who can continue care.

Please, do yourself a favor and think through these issues and discuss them with legal counsel, **BEFORE** you sign any employment agreement to join a medical practice. We can help you, we can give you solid advice at that stage and when you’re contemplating an exit, but the best thing to do is negotiate ahead of time, so when the time comes for separation, you can make it smooth and protect your interest in continuing with the patients who choose to stay in with you, while not provoking a costly and unnecessary lawsuit with your former employer.

As John F. Kennedy said: *“Let us never negotiate out of fear, but let us never fear to negotiate”*

Here’s to the success of your healthcare venture, old or new, we look forward to speaking with you very soon.

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