

RESTRAINT OF TRADE

A doctor who had worked in a private practice for three years at the time, wished to terminate his contract as professional assistant to accept full time position in a nearby government hospital. The contract he had entered into with the owner of the practice stipulated a restraint of trade for 3 years at a 25 km radius.

The restraint of trade clause was normally inserted in an employment agreement at a private practice to prevent partners/ associates/ professional assistants/ locums working at that practice from creating future competition when they leave (by canvassing patients or making use of the services of any other providers). In law such provision will be binding and enforceable only if it is reasonable as to the area (differentiate between urban and rural) and timelines. It is difficult to lay down guidelines and the circumstances of each case will show whether the limitations are reasonable.

The doctor was advised that the services provided, scope of practice and environment differ quite extensively between the public and private sectors of medical services and there would be no threat if he resigned from the practice and accepted a position at the local public hospital (even when within the restraint's conditions ie under the 15kms as was mentioned). However, it was clearly stated that if his duties and position at the public hospital would somehow pose a threat to his employer at the private practice, in that you would start seeing the patients from the private practice, the employer at the private practice would be entitled to enforce the restraint of trade clause. It was also advised that if possible, he had to approach the employer of the private practice and fully disclose his interest in a position at the public hospital. This might have enabled him to come to an agreement with the employer that the Restraint of Trade would not be applicable under those circumstances.