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### **Non-Compete Agreement Unenforceable Due to Material Breach**

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Generally, a non-compete agreement provides restrictions on competing against an employer for a specific duration and geographical area. Often times a non-compete agreement is contained in an employment agreement. In order to be an enforceable, the courts generally find that the restrictions must be narrowly drafted to reasonably protect the legitimate business concerns of the employer. Courts analyze each restrictive covenant and the employment relationship independently to determine whether the non-compete provision is enforceable.

Recently, an Illinois Appellate Court considered whether a covenant not to compete was enforceable against a former employee who held the position of physician. To determine whether the non-compete agreement was unenforceable the court examined the employer's compliance with the terms of the employment agreement which contained a non-compete agreement. In so doing, the court found that physician owned corporation was not entitled to enforce the non-compete agreement prohibiting the former employee from practicing medicine within 10 miles of the employer's office, because the court found that employer materially breached the terms of the agreement. The court stated that a breach of a contract can operate to discharge the duties of a covenant not to compete where the breach is material. In this case the court found that the employer breached contract by: (1) attempting to unilaterally change provisions of the agreement; (2) allowing the corporation to be temporarily dissolved in violation of agreement, and (3) failing to provide medical and malpractice insurance as agreed in contract. As such, the court found the breach of the terms of the employment agreement to be material and therefore refused to enforce the non-compete agreement. Accordingly, careful consideration should be given to compliance with the terms of an employment agreement when determining if the non-compete provision is enforceable. For additional employment information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*\*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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