

By: Elkins

H.B. No. 3623

A BILL TO BE ENTITLED

AN ACT

relating to covenants not to compete by physicians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.50(b), Business & Commerce Code, is amended to read as follows:

(b) A covenant not to compete is enforceable against a person licensed as a physician by the Texas Medical Board [~~State Board of Medical Examiners~~] if such covenant complies with the following requirements:

(1) the covenant must:

(A) not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment;

(B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas Medical Board [~~State Board of Medical Examiners~~] under Section 159.008, Occupations Code; and

(C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;

(2) the covenant must provide for a buy out of the

1 covenant by the physician at a reasonable price or, at the option of
2 either party, as determined by a mutually agreed upon arbitrator
3 or, in the case of an inability to agree, an arbitrator of the court
4 whose decision shall be binding on the parties; ~~[and]~~

5 (3) the covenant must provide that the physician will
6 not be prohibited from providing continuing care and treatment to a
7 specific patient or patients during the course of an acute illness
8 even after the contract or employment has been terminated; and

9 (4) the covenant is part of an agreement that
10 obligates the physician to perform personal services as a licensed
11 physician.

12 SECTION 2. Section 15.51, Business & Commerce Code, is
13 amended by adding Subsection (d) to read as follows:

14 (d) If a covenant not to compete in which the promisor is a
15 person licensed as a physician by the Texas Medical Board is found
16 to be ancillary to or part of an otherwise enforceable agreement but
17 does not contain the requirements specified in Section 15.50(b),
18 the court shall reform the covenant to the extent necessary to cause
19 the covenant to conform to the requirements specified in Section
20 15.50(b) and enforce the covenant as reformed, except that:

21 (1) the court may not award the promisee damages for a
22 breach of the covenant before its reformation; and

23 (2) the relief granted to the promisee is limited to
24 injunctive relief.

25 SECTION 3. This Act applies only to a covenant entered into
26 on or after the effective date of this Act. A covenant entered into
27 before the effective date of this Act is governed by the law in

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1 effect at the time the covenant was entered into, and that law is
2 continued in effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2009.