

Using Restrictive Covenants in an Outpatient Mental Health Practice Guide

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When considering the use of restrictive covenants (also known as non-compete agreements) with employees in a psychology outpatient practice, it's essential to ensure that these agreements are fair, legally enforceable, and aligned with your practice's values and goals. Here's a list of considerations:

1. Legal Compliance:

- Verify the legality of restrictive covenants in your jurisdiction. Laws regarding non-compete agreements vary widely by state and country.
- Consult with a legal expert specializing in employment law to ensure your agreements comply with relevant regulations.

2. Necessity Assessment:

- Determine whether a restrictive covenant is necessary for protecting your practice's legitimate business interests, such as proprietary information, referral relationships, or trade secrets.
- Determine if you simply need a non-disclosure agreement, rather than a non-compete agreement, to protect proprietary information.
- Assess the potential impact of employee competition on your practice's financial stability and reputation. Will you truly be significantly impacted if the employee opens up a practice in your vicinity?

3. Scope and Duration:

- If you decide to use a non-compete agreement, define its geographic scope (e.g., radius or region) and duration (e.g., months or years). Consider the role that telehealth may play in defining the scope (i.e., not restricted to a particular radius or region).
- Ensure that the scope and duration are reasonable and proportionate to the legitimate interests being protected.

4. Employee Classifications:

- Identify which categories of employees will be subject to restrictive covenants (e.g., clinicians, administrative staff, practice partners).
- Tailor the terms of the agreements to reflect the specific roles and responsibilities of each employee category.

5. Consideration and Compensation:

- Provide adequate consideration or compensation in exchange for agreeing to the restrictive covenant.
- Consider additional benefits or incentives to offset any perceived limitations on future employment opportunities.
- Consider determining a presumed damages amount in advance and make it part of the agreement, in case the person wants to be free of the agreement.

6. Drafting Clarity:

- Clearly articulate the terms and conditions of the restrictive covenant in the employment contract or a separate agreement.
- Use language that is unambiguous and easily understandable by employees and attorneys who may represent you or your employees.

7. Enforceability Factors:

- Ensure that the restrictive covenant is narrowly tailored to protect legitimate business interests and does not impose undue hardship on the employee.
- Avoid overly broad restrictions that could be deemed unenforceable by a court.
- Determine if you are willing to pay legal fees to try to enforce an agreement. If not, then consider not having such an agreement.

8. Review and Revision:

- Regularly review and update restrictive covenants to reflect changes in your practice's needs, industry regulations, or legal precedents.
- Solicit feedback from legal counsel periodically to ensure ongoing compliance and effectiveness.

9. Communication and Transparency:

- Communicate the purpose and implications of restrictive covenants openly and transparently with current and prospective employees.
- Provide an opportunity for employees to ask questions and seek clarification about the terms of the agreements.

10. Alternative Measures:

- Explore alternative methods for protecting your practice's interests, such

- as confidentiality agreements or non-solicitation agreements.
- Consider whether less restrictive measures might achieve the same objectives without impeding employee mobility.

11. Documentation and Record-Keeping:

- Maintain accurate records of employees who have agreed to restrictive covenants, including signed agreements and any related correspondence.
- Keep documentation organized and accessible for future reference or legal proceedings if necessary.

12. Seek Legal Advice:

- When in doubt, seek guidance from legal professionals who specialize in employment law and have experience with restrictive covenants in the healthcare industry.

By carefully considering these factors and consulting with TPI and with legal experts, you can develop and implement restrictive covenants and other alternatives that appropriately protect your practice, while respecting the rights and interests of your employees.

The practice of your dreams can be your reality. If you're looking for personalized guidance or more on this topic, consider a one-on-one consultation with a TPI consultant. Contact us at support@thepracticeinstitute.com to arrange a convenient time.

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