Policy on the Use of Non-Compete Agreements

Adopted: May 9, 2000
Revised & Approved: March 22, 2001

Non-Competition Standard Clinician Agreement Revised: January, 2014

Introduction
Washington University School of Medicine requires a broad, diverse patient base in order to fulfill its mission of educating medical professionals and conducting advanced research. The School of Medicine invests significant financial resources in its clinical faculty in order to facilitate the development of such a patient base. The use of non-compete agreements is one method to protect the institution’s investment in its clinical and research patient base.

Purpose
Non-compete agreements protect Washington University School of Medicine (WUSM) from dilution of its patient base by a faculty member without imposing an unreasonable restraint on the faculty member’s ability to practice medicine.

Policy Statement
All candidates for investigator track and clinician track faculty positions who will perform any level of clinical activity will be expected (except in rare circumstances) to execute a non-compete agreement as a condition of initial appointment and, in certain circumstances, ongoing employment.

- The language in the non-compete agreement should be standard across all departments for investigator and clinician faculty, except as may be approved by the Faculty Practice Plan CEO.
- The standard terms of the non-compete agreement preclude a faculty member from competing:
  - during employment and for two (2) years after employment terminates, and
  - within a specific mile (generally, 15) radius from WUSM and a specific mile (generally, 15) radius from any facility at which the faculty member or any WUSM faculty member in the faculty member’s specialty or subspecialty practices at the time of the faculty member’s termination of employment.
The foregoing restriction would not apply if WUSM terminated a faculty member’s employment without cause.

The agreement also would preclude a faculty member (during employment and for 2 years after employment terminates) from employing or attempting to employ WUSM employees, soliciting the medical business of or interfering in WUSM’s relationships with patients, soliciting in writing the medical business of or interfering in WUSM’s relationships with referring parties, or interfering in WUSM’s relationships with entities that contract for services.

See Attachment 1 for the WUSM language. This language is the standard non-compete agreement language and is considered reasonable and enforceable.

An Ad Hoc Committee of the Faculty Practice Plan Board will be appointed by the Board Chair to establish principles for any exceptions to this policy. Requests for exception or modification must be submitted by the Department Head to the Faculty Practice Plan CEO. The CEO will utilize the principles established by the Ad Hoc Committee to review such requests and determine whether they shall be granted. If the Department Head and FPP CEO are not in agreement on whether an exception/modification should be granted, the Ad Hoc Committee will review and decide upon the request.

Standard procedures have been developed to support the implementation of the WUSM non-compete agreements. These procedures include:

- Offer letters must be generated for all newly recruited faculty members and must contain a description of the non-compete agreement as a condition of appointment and continued employment. A copy of the non-compete agreement should be attached to the offer letter.
- Newly recruited faculty members must sign and date the offer letter and the non-compete agreement prior to commencement of employment.
- Standard non-compete agreements should be used for investigator and clinician track faculty. Agreements for clinician track faculty are separate from the clinician track contract.
- Existing faculty members will not be required to sign a non-compete agreement. Departments may request existing faculty to sign a non-compete agreement. These requests may arise in conjunction with new business opportunities (i.e. significant investments in new offices, clinical or academic programs) or changes in the terms and conditions of employment.
- If an existing tenured faculty member executes a non-compete agreement, his or her department should recite in the Agreement the consideration, if any, that is provided in exchange.
NONCOMPETITION AGREEMENT

THIS NONCOMPETITION AGREEMENT (this “Agreement”) is made and entered into this between The Washington University (the “University”), a corporation created by special act of the Missouri General Assembly, and ______________, an individual (“Clinician”).

RECITALS

A. University has offered to employ Clinician within the Department of ______________ at Washington University School of Medicine (“WUSM”) with an anticipated employment commencement date on or about ______________ and this Agreement is a material and important aspect of University’s initial and continued employment of Clinician.

B. Clinician acknowledges that University requires a broad, diverse patient base in order to fulfill its mission of medical education and medical research, and that University will invest significant financial resources in Clinician’s development of such a patient base on behalf of University.

C. Clinician acknowledges that University has substantial Confidential and Trade Secret Information (as defined below) relating to University’s services and activities.

D. Clinician has the ability to engage in the practice of medicine or a business or businesses that could compete with University, and such activity could lead, inevitably or otherwise, to disclosure and/or use of University’s Confidential and Trade Secret Information, and could damage University’s goodwill and patient relationships.

E. University would suffer harm and damages, including the loss or reduction of its patient base and goodwill, if Clinician engaged, directly or indirectly, in the practice of medicine in competition with University in violation of this Agreement.

F. University and Clinician have reached this Agreement in good faith in arms-length negotiations.

NOW, THEREFORE, in consideration of the recitals and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Covenants. Except as necessary for Clinician to perform Clinicians duties and responsibilities to University in connection with Clinician’s employment by University, Clinician shall not, during Clinician’s employment with University and for two (2) years immediately thereafter (together the “Restricted Period”), directly or indirectly, acting alone or with others, for himself/herself or on behalf of any person or entity:

1.1 Engage in the practice of medicine or own, operate, finance, control, engage in, or participate in any business or entity that provides medical services within (a) a fifteen (15) mile radius of WUSM and (b) a fifteen (15) mile radius of any office or facility at which Clinician or any University faculty member in the same specialty or subspecialty as Clinician (as reasonably determined by University) provides clinical services for or on behalf of University (WUSM and such other offices and facilities are referred to herein collectively as the “Protected Entity”);

1.2 Employ, attempt to employ or solicit for employment any employee of a
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Protected Entity, or seek to induce or influence any such employee to leave the employment of a Protected Entity:

1.3 Interfere in a Protected Entity’s relationships with, or solicit the medical business of, patients of the Protected Entity; interfere in a Protected Entity’s relationships with, or solicit in writing the medical business of, Clinicians or other health care professionals who refer or have referred patients to the Protected Entity; or interfere in the Protected Entity’s relationships with entities with which the Protected Entity contracts to provide services;

1.4 Use, copy, reproduce, summarize, or disclose (directly or indirectly) to any third parties any of University's Confidential and Trade Secret Information. “Confidential and Trade Secret Information” includes any confidential information pertaining to the University’s patients, business, research and other activities, including all such information relating to University’s medical management and research, managed care contracting, marketing and operational methods, business and strategic plans, organizational data, internal financial information, research and development plans and activities, business acquisition and expansion plans, cost and pricing information and policies, patient care activity and patient lists, as well as any information of third parties with respect to which University has confidentiality obligations. Clinician acknowledges and agrees that University derives economic value, actual or potential, from Confidential and Trade Secret Information not being made available to, generally known or readily ascertainable by other persons who can obtain economic and/or competitive value from its disclosure or use.

2. Term. Clinician’s obligations, and University’s rights, under this Agreement will be for the Restricted Period, unless waived in writing by the Dean of the Washington University School of Medicine; provided, however, that Clinician’s obligations under Section 1.4 shall continue beyond the Restricted Period. Notwithstanding the foregoing, Section 1.1 shall not apply if Clinician’s appointment is not renewed upon its expiration. If Clinician’s appointment is nonrenewed and Clinician terminates employment prior to date such appointment would otherwise expire, the provisions of Section 1.1 shall continue to apply through the expiration date of such appointment.

3. Representations and Agreements. Clinician acknowledges, agrees, represents and covenants that:

3.1 The restrictive covenants set forth in this Agreement are reasonable, necessary and essential to protect the legitimate business interests of University in (among other things) its goodwill, patient relationships, and Confidential and Trade Secret Information and to enable University to realize and derive all of the benefits, rights and reasonable expectations of University’s employment of Clinician;

3.2 The duration of the covenants contained in this Agreement and the geographic restriction of the covenants contained in this Agreement are reasonable;

3.3 Good and valuable consideration exists for Clinician to be bound by the restrictive and other covenants contained in this Agreement;

3.4 Clinician’s breach, or threatened breach, of any term or provision contained in this Agreement will cause irreparable harm to University for which there may be no adequate remedy at law and for which the ascertainment of damages would be difficult, and University shall be entitled, in addition to, and without having to prove the inadequacy of, other remedies at law, to specific performance of this Agreement, as well as injunctive relief (temporary, preliminary and permanent, and without being required to post bond or other security);

3.5 If Clinician breaches or threatens to breach the Agreement, Clinician shall pay to
University the attorneys’ fees and costs incurred by University in enforcing its rights hereunder.

3.6 If and to the extent that any provision of this Agreement is adjudicated to be invalid or unenforceable because it is somehow overbroad or unreasonable, that provision shall not be void but rather shall be limited only to the extent required by applicable law and enforced as so limited.

3.7 Clinician shall disclose the existence of this Agreement to any new employer or potential employer which offers services that compete with University. Clinician consents to University informing any subsequent actual or potential employer of Clinician, or any entity actually or potentially engaging Clinician, of the existence and terms of this Agreement.

3.8 This Agreement shall continue and be in full force and effect without re-execution in the event Clinician is employed by University or its affiliates or successors in another position or location.

4. Miscellaneous

4.1 This Agreement may be amended or supplemented only by an instrument in writing executed by all the parties hereto.

4.2 Clinician’s employment by University involves personal services and Clinician’s rights and obligations hereunder are not transferable or assignable by Clinician to any other party. University may assign its rights or obligations hereunder to any affiliate, successor in interest or other entity, and the provisions hereof will be binding upon Clinician.

4.3 Except as provided herein, this Agreement constitutes the entire agreement of the parties regarding the subject matter hereof, and supersedes all prior agreements, both written and oral, between the parties with respect to the subject matter hereof.

4.4 This Agreement shall be governed by and construed and enforced in accordance with the laws (other than the rules governing conflicts of laws) of the State of Missouri.

4.5 Any notice or communication hereunder must be in writing and given by depositing the same in the United States mail, addressed as follows, postage prepaid and registered or certified with return receipt requested or by delivering the same in person or by courier or delivery service, and such notice will be deemed received on the date on which it is delivered, or a delivery attempt is made, or on the third business day following the date on which it is so mailed:

If to the University: The Washington University
660 S. Euclid Ave. Box
St. Louis, MO 63110

If to Clinician:

Any party may change its or his/her address for notice by written notice given to the other party (ies) in accordance with this Section.

4.6 In light of the parties’ substantial contacts with the State of Missouri, each of the parties hereto consents to the in personam jurisdiction of any state court in St. Louis County,
Missouri and in federal court in the Eastern District of Missouri and waives any objection to the venue of any such suit, action or proceeding. The foregoing jurisdiction shall be exclusive, except that University may seek injunctive relief in any applicable jurisdiction.

4.7 For the convenience of the parties, copies of this Agreement may be executed in counterparts and signature pages exchanged by facsimile or electronically in portable document format (a/k/a pdf). The parties intend that counterpart copies signed and exchanged as provided in the preceding sentence shall be fully binding as an original handwritten executed copy hereof and all of such copies together shall constitute one instrument.

4.8 The waiver by any party hereto of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other breach of the same or any other provision by any party.

4.9 All remedies, whether at law or in equity, are cumulative and the election of any one or more will not constitute a waiver of the right to pursue other available remedies.

4.10 During any breach of this Agreement by Clinician, the Restricted Period set forth in Section 2 above will be tolled.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the dates written below.

THE WASHINGTON UNIVERSITY

By: ___________________________  ___________________________, M.D.

James P. Crane, M.D.
Associate Vice Chancellor for Clinical Affairs
and CEO, Faculty Practice Plan

Date: ___________________________  Date: ___________________________