

NOTICE: PROPOSED AMENDED USF SYSTEM REGULATION

DATE: February 18, 2013

Regulation No: USF10.114

Title: College of Medicine Faculty Restrictive Covenants

Summary:

Florida Board of Governors Regulation 1.001 provides that “Each board of trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors,” (7-21-05). Such regulations must be consistent with law, and the regulations and strategic plan of the Board of Governors. The Regulation Development Procedure requires that the University Board of Trustees periodically review existing regulations to ensure they are current and consistent.

USF Regulation 10.114, College of Medicine Faculty Restrictive Covenants is amended to re-define appropriate geographic scope in consideration of expanding USF clinical practice sites, USF patient need and reasonableness for departing USF physicians

This Regulation, currently and as proposed, only applies only to out-of-unit USF Morsani College of Medicine faculty members (“USF physicians”) hired after June 26, 2005 who provide medical care in a clinical setting.

The Regulation (adopted in 2005 and last amended in 2009) authorizes application of a restrictive covenant to departing USF physicians; that covenant providing when the physician’s USF employment ends, he/she may not--for a 2-year period--render medical service in a subsequent non-USF practice to USF patients, defined as individuals treated 2 years prior to the physician’s departure date. This time-limited restriction of practice, under the current Regulation, applied only within a defined geographic area; namely Hillsborough and Pinellas Counties. Upon hire, the physician has also signed and would, in the future, sign a contract containing this restrictive covenant.

Since adoption of the Regulation, it has become apparent that it would be not only more reflective of expanding USF Health clinical initiatives, but also reasonably considering the least restrictive practice for departing physicians to re-define the restricted geographic area as either (1) a 30-mile radius from the physician’s assigned USF clinical practice site or (2) Hillsborough and Pinellas Counties if that is the location of the physician’s primary assigned clinical practice or (3) both, if there have been multiple assigned clinical practice site locations, including locations inside and outside of Hillsborough and Pinellas Counties.

USF Health has consulted with numerous internal groups containing COM administrators and faculty and additionally with expert counsel prior to submitting this proposed amendment. Applying the comments obtained, this proposal has been crafted to contain the least restrictive concept of geographic scope for the departing faculty members, while also recognizing USF’s legitimate interests in protecting its current faculty, training provided to the departing faculty and developed patient relationships.

End of Summary.

Full text of the proposed amended Regulation follows:

Number: USF10.114
Subject: College of Medicine Faculty Restrictive Covenants

Date of Origin: 06-25-05 **Date Last Amended:** 11-09-09 **Date Last Reviewed:**

(1) The University of South Florida System (USF System) recognizes that:

(a) An appointment to the faculty of the USF Health [Morsani](#) College of Medicine (COM) involves teaching and clinical practice responsibilities, and that these responsibilities are interrelated and performed within the COM, at affiliated hospitals and at other clinical sites;

(b) Participation by a COM faculty member in any clinical practice that is not within the course and scope of the faculty member's assigned duties within or by the COM during the term of such employment, as well as any other competitive activities, could have a substantial negative impact on the USF System's legitimate business interests, as defined below;

(c) The COM serves patients located throughout the ~~counties comprising the~~ USF System's ~~principal~~ service area, as defined below, and most physicians who refer patients to faculty members are located within this area;

(d) The participation by a former faculty member in any clinical practice within an area not greater than the USF System's ~~principal~~ service area during a period of up to two years following termination or cessation, with or without cause, of the faculty member's employment within the COM, could have a substantial negative impact on the USF System's legitimate business interests; and

(e) The interference by a former faculty member in the USF System's relationships with its patients or referring physicians within the USF System's ~~principal~~ service area, during a period of up to two years following termination or cessation, with or without cause, of the faculty member's employment within the COM, could have a substantial negative impact on the USF System's legitimate business interests.

(2) For purposes of this Regulation, the following terms shall have the following definitions:

(a) The term "clinical practice" means the practice of medicine or other health profession by the individual party to the restrictive covenant including, but not limited to, direct or indirect ownership, management or operation of; or being a director, partner or employee of; a contractor or consultant to; or a practitioner in; any entity, group or association engaged in the provision of medical or other health care services.

(b) The term "USF System's ~~principal~~ service area", ~~means that area within the geographic boundaries of Hillsborough County and Pinellas County, Florida,~~ with regard to any COM faculty member, is defined as follows:

1. Where the faculty member has been assigned by COM to primary clinical practice site(s) only within Hillsborough and Pinellas Counties, during the two years preceding termination of such faculty member's COM employment, that geographic area within the boundaries of those two Florida Counties;

or

2. Where the faculty member has been assigned by COM, in any sequence, to primary clinical practice site(s) within Hillsborough and Pinellas Counties, and to primary clinical practice site(s) outside those two Florida Counties, during the two years preceding termination of such faculty member's COM employment, those geographic area(s) (i) within the boundaries of both Hillsborough and Pinellas Counties, and (ii) within a radius of thirty (30) miles from such faculty member's COM assigned primary clinical practice site(s) outside of those two Florida Counties; or

3. Where the faculty member has been assigned by COM to a primary clinical practice site only outside of Hillsborough and Pinellas Counties during the two years preceding termination of such faculty member's COM employment, those geographic area(s) within a radius of thirty (30) miles from such faculty member's COM assigned primary clinical practice site(s).

(c) The term "USF System's legitimate business interests" means and includes but is not limited to the following:

1. The USF System's need to protect its trade secrets, as defined in Section 688.002(4), Florida Statutes, and valuable confidential business and professional information that otherwise does not qualify as a trade secret;

2. The USF System's need to preserve the goodwill developed through the USF System's clinical practice over many years, including substantial relationships with prospective or existing patients, referring physicians, and goodwill associated with the USF System's name, trademarks, service marks, and status as the only academic health sciences center located within the USF System's ~~principal~~ service area;

3. The specialized training, enhancement of training and research opportunities provided to its faculty; and

4. The advancement of the COM's clinical, educational, service and research missions, supported by public taxes and donations, and prevention of erosion of the patient and referral population and economic base necessary to support these missions.

(3) The USF System's Chief Administrative Officer (CAO) is authorized to include, as a condition of appointment to a faculty position within the COM, one or more restrictive covenants as a part of any or all of the following:

(a) Faculty employment contract;

(b) Supplemental agreement;

(c) Letter of appointment; or

(d) Any other agreement with respect to the employment relationship between the USF System and the faculty member (collectively, the "Applicable Documents").

The CAO is authorized to include one or more of such restrictive covenants in any or all of the Applicable Documents only with respect to a USF System faculty member who is employed within the COM subsequent to June 26, 2005. The CAO is specifically not authorized to include one or more of such restrictive covenants in any or all of the Applicable Documents with respect to a USF System faculty member who is employed within the COM prior to June 26, 2005, or to physicians-in-training (residents or fellows).

(4) Such restrictive covenant or covenants shall, to the extent the CAO determines is necessary to protect the USF System's legitimate business interests, prohibit:

(a) The faculty member (hereinafter, the "restricted individual"), during the term of the restricted individual's employment within the COM, from engaging in clinical practice that is not within the course and scope of the restricted individual's employment within the COM;

(b) Such restricted individual, for a period of up to two years following the termination or cessation of such restricted individual's employment within the COM, with or without cause, from engaging in clinical practice within an area not exceeding the USF System's ~~principal~~ service area; and

(c) Such restricted individual, for a period of up to two years following termination or cessation of such restricted individual's employment within the COM, with or without cause, from:

1. Providing any medical service within the USF System's ~~principal~~ service area to any individual who was a patient of the COM within the two years prior to the termination or cessation of such restricted individual's employment, or who was referred to the COM or such restricted individual by a physician who, within the two years prior to the termination or cessation of such restricted individual's employment, had previously referred any patients to the COM;

2. Soliciting any COM patient or referring physician to retain such restricted individual, or any physician, medical practice or health care provider with which such restricted individual has, directly or indirectly, any employment, consulting, ownership or other interest or relationship, to perform any medical service within the USF System's ~~principal~~ service area; or

3. Soliciting any COM patient or referring physician to cease using the COM to perform medical services within the USF System's ~~principal~~ service area.

(5) The USF System's remedies for a restricted individual's breach of a restrictive covenant shall include all remedies provided by law and equity, including without limitation those remedies provided by Section 542.335, Florida Statutes, or any successor to such statute.

Authority: Art. IX, Sec 7, Fla. Constitution, Board of Governors Regulation 1.001. History-New 06-26-05, Formerly 6C4-10.114, F.A.C., Amended 11-9-09.

AUTHORITY TO ADOPT/AMEND/REPEAL REGULATION(S): Art. IX, Sec. 7, Fla. Constitution, BOG Regulation 1.001.

UNIVERSITY OFFICIAL INITIATING PROPOSED AMENDMENT OF REGULATION(S):
Bryan Burgess, Associate Vice President for Corporate & Transactional Affairs/Executive Advisor and R.B. Friedlander, Deputy General Counsel.

WRITTEN COMMENTS CONCERNING THESE PROPOSED REGULATIONS MAY BE SUBMITTED WITHIN 14 DAYS AFTER THE POSTING DATE OF THIS NOTICE TO:

Lauren Hartmann, Legal Administrative Specialist
Office of the General Counsel
University of South Florida
4202 East Fowler Avenue, Suite CGS 301
Tampa, FL 33620-4301
Phone: (813) 974-7150;
FAX: (813) 974-5236;
E-MAIL: usflegal@usf.edu