

# OFFICE OF THE GENERAL COUNSEL: USF REGULATIONS

NOTICE: AMENDED REGULATION

DATE: Sept. 30, 2009

USF10.114-College of Medicine Faculty Restrictive Covenants

## Summary of Revisions

The Florida Board of Governors Regulation Development Procedure calls for a University to monitor the effects of new regulations and periodically review existing regulations to ensure they are current and consistent.

USF Health reviewed the College of Medicine Faculty Restrictive Covenants Regulation and determined that the Regulation requires technical amendments to reflect the function of the USF System. Text of the amended regulation follows.

## AUTHORITY TO ADOPT/AMEND/REPEAL REGULATIONS:

Art. IX, Section 7, Fla. Constitution; Board of Governors Regulation 1.001.

UNIVERSITY OFFICIAL INITIATING PROPOSED AMENDMENTS: Stephen K. Klasko, MD, MBA, Sr. Vice President for USF Health and Dean, USF College of Medicine.

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

Dee Brown, Agency Clerk  
Office of the General Counsel  
University of South Florida System  
4202 East Fowler Avenue, Suite ADM 250  
Tampa, FL 33620-6250  
Phone: (813) 974-7150; FAX: 813-974-5236; E-MAIL: [USFLEGAL@ADMIN.USF.EDU](mailto:USFLEGAL@ADMIN.USF.EDU)

University of South Florida System Regulation USF10.114

## COLLEGE OF MEDICINE FACULTY RESTRICTIVE COVENANTS

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

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

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

(c) The COM ~~University~~ serves patients located throughout the counties comprising the USF System's ~~University'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 ~~University'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 ~~College of Medicine~~, could have a substantial negative impact on the USF System's ~~University's~~ legitimate business interests; and

(e) The interference by a former faculty member in the USF System's University's relationships with its patients or referring physicians within the USF System's University'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 College of Medicine, could have a substantial negative impact on the USF System's University's legitimate business interests.

(2) For purposes of this Regulation rule, 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 University's principal service area" means that area within the geographic boundaries of Hillsborough County and Pinellas County, Florida.

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

1. The USF System's University'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 University'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 University's

name, trademarks, service marks, and status as the only academic health sciences center located within the USF System's University'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 College of Medicine'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 University's (CAO) is authorized to include, as a condition of appointment to a faculty position within the COM College of Medicine, 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 University and the faculty member (collectively, the "Applicable Documents").

The University's 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 University faculty member who is employed within the COM College of Medicine subsequent to the effective date of this Regulation Rule. The University's 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 University

faculty member who is employed within the COM College of Medicine prior to the effective date of this Regulation Rule 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 University'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 College of Medicine, from engaging in clinical practice that is not within the course and scope of the restricted individual's employment within the COM College of Medicine;

(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 College of Medicine, with or without cause, from engaging in clinical practice within an area not exceeding the USF System's University'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 College of Medicine, with or without cause, from:

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

2. Soliciting any ~~COM University~~ 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 University's~~ principal service area; or

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

(5) The ~~USF System's University'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 \_\_\_\_\_.*