

1 **University of South Florida System Regulation USF10.114**

2 **COLLEGE OF MEDICINE FACULTY RESTRICTIVE COVENANTS**

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

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

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

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

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

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

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

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

31 (b) The term "USF System's University's principal service area" means that area within the
32 geographic boundaries of Hillsborough County and Pinellas County, Florida.

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

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

38 2. The USF System's University's need to preserve the goodwill developed through the USF
39 System's clinical practice over many years, including substantial relationships with prospective or
40 existing patients, referring physicians, and goodwill associated with the USF System's University's

41 name, trademarks, service marks, and status as the only academic health sciences center located
42 within the USF System's ~~University's~~ principal service area;

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

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

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

51 (a) Faculty employment contract;

52 (b) Supplemental agreement;

53 (c) Letter of appointment; or

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

56 The ~~University's~~ CAO is authorized to include one or more of such restrictive covenants in any or
57 all of the Applicable Documents only with respect to a USF System ~~University~~ faculty member who
58 is employed within the COM College of Medicine ~~College of Medicine~~ subsequent to June 26, 2005 ~~the effective date of~~
59 ~~this Rule~~. The ~~University's~~ CAO is specifically not authorized to include one or more of such
60 restrictive covenants in any or all of the Applicable Documents with respect to a USF System

61 ~~University~~ faculty member who ~~was~~ employed within the COM College of Medicine prior to June
62 26, 2005, ~~the effective date of this Rule~~ or to physicians-in-training (residents or fellows).

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

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

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

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

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

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

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

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

91 *Authority: Art. IX, Sec 7, Fla. Constitution, Board of Governors Regulation 1.001. History-New 06-26-05,*

92 *Formerly 6C4-10.114, F.A.C., Amended .*