

STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

**AFFIDAVIT OF ROBERT McNAMARA, M.D., F.A.A.E.M.**

On this 27th day of May, 2005, Robert McNamara, M.D., personally appeared before me, known to me to be the person described herein, who executed the following instrument, and acknowledged that he executed it as his free act and deed.

After being duly sworn, Robert McNamara, M.D., stated:

- 1) My name is Robert McNamara, M.D., F.A.A.E.M. I am a board-certified emergency physician.
- 2) I am a Professor of Emergency Medicine and the Chairperson of the Department of Emergency Medicine at Temple University School of Medicine in Philadelphia, Pennsylvania.
- 3) From 1996 to 2002 I served the American Academy of Emergency Medicine (AAEM), a national professional society, as its President. I currently serve on that organization's Board of Directors.
- 4) I currently serve as the Chairperson of the AAEM taskforce on the corporate practice of emergency medicine.
- 5) Based on the above, I am familiar with the issue of non-compete clauses and the differences between urgent care centers and emergency departments. I am also familiar with the positions taken by organized medicine on non-compete clauses.

- 6) Non-compete clauses in emergency medicine do not serve the interest of the public as they remove an emergency physician from the patients they serve and affect the quality of care in the emergency department.
- 7) The quality of care provided by an emergency physician includes such factors as knowledge of a hospital's processes and capabilities and knowledge of the capabilities of the hospital medical staff. Through practice experience at an emergency department the emergency physician develops the knowledge of which steps to take to save the life of a critically ill patient and understands which situations will be beyond the hospital's limitations so that timely transfer to a higher level of care will occur. A non-compete clause that removes an emergency physician poses a risk to the public as the replacement physician will need significant time to develop this expertise.
- 8) Teamwork is an essential aspect of the practice of quality emergency medicine. With practice experience the emergency physician becomes the leader of the treatment team that includes the nursing and other hospital staff. Along with this is the acquiring of knowledge by all parties in the team as to the capabilities and practice styles of the other team members. A non-compete clause that removes an emergency physician poses a risk to the public as the replacement physician will require significant time to develop this teamwork.
- 9) An emergency physician, although practicing episodic care, develops with practice experience invaluable insight into the patient population treated in the emergency department including individual patients with unstable chronic disease who are frequent visitors. The experience gained allows the emergency physician

- to apply the proper treatment to save the life of such a patient. A non-compete clause that results in a new physician places such patients at risk during the trial and error phase of the new physician's gaining the needed practice experience.
- 10) Non-compete clauses in emergency medicine do not serve the usual purpose of non-compete clauses in medicine where they are used to prevent a physician from "stealing" patients away from a practice. As emergency physicians do not build their own emergency department the patients will not be "stolen" to another nearby practice site. The non-compete clause in emergency medicine removes the physician from the patients and is not needed to keep the patients at the practice site.
- 11) Urgent care medicine is distinctly different than the practice of emergency medicine and is not an adequate professional substitute. An urgent care center by nature does not treat the life threatening illnesses that are the core of the specialty of emergency medicine. Emergency physicians are fully qualified to practice urgent care medicine, however, the limitations of urgent care medicine are severe. The most seriously ill and injured patients are not brought to urgent care centers by ambulance as urgent care centers are unable to provide the required stabilizing care.
- 12) Urgent care medicine severely limits the scope of practice of an emergency physician in terms of the procedural aspects of emergency medicine. Retention of skill in invasive and critical procedures such as endotracheal intubation and central venous catheterization is not possible in the practice of urgent care medicine.

13) Prolonged practice in urgent care medicine will lessen the possibility of an emergency physician gaining a position in emergency medicine given the deterioration in the procedural skills and ability to handle the critically ill patient.

Therefore, non-compete clauses, generally considered unethical by the American Medical Association and AAEM, adversely affect the delivery of emergency services and act counter to the public interest. Rarely if ever does the practice of emergency medicine involve trade secrets, and rarely do emergency departments directly compete against each other. Moreover, an Urgent Care Center cannot provide effective competition with an emergency department. Thus, justification almost never exists for a non-compete clause in the practice of emergency medicine.

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Robert McNamara, M.D., F.A.A.E.M.

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 27TH DAY OF  
May, 2005

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NOTARY PUBLIC