



**Non-Compete, Non-Solicitation, and Non-Disclosure:
What are they and do we need them?®**

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Congratulations! You have a thriving practice and have hired your first associate veterinarian who will not only share the workload but help build up your caseload and the practice’s goodwill. This hopefully will translate into more free time and higher profits!! Your new associate immediately embraces the culture of your practice and everyone upon meeting her instantly loves her. Life couldn’t be better.

The associate, with your blessings of course, begins to build her own clientele within your practice. Over the course of her 3 years of employment, she builds a very large following of loyal pet owners. A win-win situation for all, right? Wrong, think again! Your young protégé decides not to renew her employment contract. She in fact decides to branch out on her own and open up a mobile veterinary practice in the very same town as your hospital. Why not work for herself, control her own work schedule and make more money? Sadly, you watch that very large client segment of your practice, you have handsomely paid her to build, walk right out the front doors of your hospital and into her mobile small animal practice.

You may not be able to prevent an associate from leaving your practice and working for another practice or starting her own, but there are preventative measures you can implement to protect your clientele and goodwill from being unfairly poached by your former associate. This is where the importance of non-compete, non-solicitation and non-disclosure and agreements come into play.

What is a non-compete, non-solicitation and non-disclosure agreement?

When creating an employment contract for a new associate, you want to make sure you protect your investment in the event things do not work out and your employee decides to stay and practice in “your” neighborhood. One of the many ways in which you can do this is by having an attorney include within the employment contract several “restrictive covenants”, provisions that contractually prohibit an employee from engaging in certain forms of unfair competitive conduct that are harmful to your business.

These restrictive covenants come in three general types; Non-Compete, Non-Solicitation and Nondisclosure (Confidentiality) Agreements.

1. **Non-Compete** agreements are generally found in employment contracts of key personnel, which generally, includes, veterinary associates, partners, and management staff. This restriction places formal limitations on such individuals from providing competitive services similar to those offered by their prior employer. For example, equine practice employers can prohibit former employees from competing in equine practice, but not small animal practice, since small animal veterinary medicine is not competitive with an equine practice. This limitation must be limited to business's client list or the employer's trade area (meaning the geographic area from where approximately 85% of the clientele come from).
2. **Non-solicitation** clauses restrict former employees from soliciting clients or other employees away from a practice. Solicitation is a broad concept and can include, direct mailings to a specific list of clients (printed out from the prior employer's computer program) or general forms of advertisement such as listings in newspapers or periodicals distributed within the practice's client trade area or enticing employees to leave the current practice and work with the former employee at the new practice.
3. **Non-disclosure** (or confidentiality) covenants prevent the use or disclosure of confidential information, such as client lists, fee schedules, marketing strategies, financials, and other forms of proprietary information, which have been available to employees during their employment.

Together these covenants protect the employer's investment in building and developing the practice, its clientele, reputation, staff, and services. The "practice's goodwill" is the key ingredient to determining a practice's value and its ability to generate income from future growth and profitability. These covenants when applied in conjunction with the policies and procedures in the practice's employee manual go a long way to protect client relationships and the tremendous efforts expended in fostering them.

Another important preventative measure you can start implementing immediately, is ensure that your clients begin to build a relationship with all your veterinarians in your hospital as opposed to just one! Your client services representative should be trained to schedule appointments amongst all the doctors and your clients should be educated on the value of establishing a client/doctor relationship with all of your practitioners, not just their "favorite" one. This helps build the loyalty of your hospital as a whole and not be vulnerable to the loyalty following the departing associate out the door. This of course includes YOU as the owner.

Make sure you know your clients and provide their pets with professional services every couple of years.

Courts will enforce these restrictions if they are deemed to be fair and reasonable and generally look at three factors to assess “fairness”: the employer’s need for protection, the hardship experienced by the employee, and the effect restraints will have upon the public. In doing so, the court evaluates the employers’ and employee’s relationship and whether each of the restraints is reasonable, in terms of the scope of the restricted activity, geographic and time limitations. Laws vary from state to state regarding enforceability of these restrictive clauses and some states, like California, do not enforce *non-compete agreements* in employment agreements. Therefore, it is advisable that one check with legal counsel when considering including them in employment contracts.

Think of these protections as a form of vaccination. It takes discipline and some legal advice to implement them, and while they may not be 100% effective in protecting the business from a disgruntled employee who wishes to unfairly compete against your practice, they can certainly afford you significant protection against the unfair competitive disease.