FLORIDA ATLANTIC UNIVERSITY
NOTICE OF PROPOSED REGULATION AMENDMENT

Date: May 2, 2020

REGULATION TITLE AND NUMBER: Restrictive Covenants (9.002).

SUMMARY: The Charles E. Schmidt College of Medicine seeks to amend FAU Regulation 9.002, Restrictive Covenants. The College of Medicine is authorized under FAU Regulation 9.002, Restrictive Covenants, to require certain clinical faculty hired after the effective date of the Regulation to agree to a restrictive covenant or "non-compete" clause in their faculty contract and/or letter of appointment. The terms of the restrictive covenant are further described in the regulation and are intended to protect the University's legitimate business interests. Regulation 9.002 does not currently apply to faculty in the College of Medicine hired prior to the original effective date of the Regulation or to part-time clinical faculty.

The proposed amendments authorize the College of Medicine to require all clinical faculty (including part-time clinical faculty), other than affiliate clinical faculty and regardless of hire date, to agree to a restrictive covenant. It also allows the Dean of the College to exempt part-time clinicians from the restrictive covenant requirement when appropriate. This exemption will enable the College to recruit part-time clinicians to teach and supervise learners while maintaining their private clinical practices.

FULL TEXT OF THE AMENDED REGULATION: The full text of the proposed amended regulation is attached to this notice, below. The full text of the existing regulation is posted on FAU's website at www.fau.edu/regulations. In addition, the full text of the proposed amended regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at (561) 297-3007 or GeneralCounsel@fau.edu.

AUTHORITY TO AMEND THE REGULATION: Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENT: Dr. Phillip Boiselle, Dean, Charles E. Schmidt College of Medicine.

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting.

THE PERSON TO BE CONTACTED REGARDING THE REGULATION AMENDMENT IS: Ms. Audra Lazarus, Office of the General Counsel, 777 Glades Road, Boca Raton, Florida, 33431, (561) 297-3007 (phone), (561) 297-2787 (fax), GeneralCounsel@fau.edu.

Florida Atlantic University

Regulation 9.002 Restrictive Covenants

(1) The University recognizes that a faculty physician appointment to the faculty of the Charles E. Schmidt College of Medicine involves both academic and clinical responsibilities, and that these responsibilities are interlinked and performed at affiliated hospitals and clinics. Furthermore, the University recognizes that medical clinical practice competition by a faculty physician within one (1~~1~~) year of the cessation of employment by the faculty physician (whether by resignation, retirement, or the expiration, non-renewal or other termination of employment) with the University and within a twenty-five (25) mile radius of a situs of the faculty physician's clinical teaching assignment within the two years preceding the cessation of employment with the University, would adversely impact the legitimate business interests of the University.

That adverse impact may include, without limitation: (i) harm to the University's College of Medicine teaching programs at its affiliated hospitals and clinics; (ii) impairment of (a) the operation and quality of the College's affiliations, and (b) the advancement of the College's clinical, educational, service, and research missions; (iii) erosion of the patient and referral populations, economic base, and goodwill necessary to support the mission of the College of Medicine within its target geographic location and market; and (iv) interference with the University's myriad other "legitimate business interests," as that term has been defined pursuant to Section 542.335, Florida Statutes, including but not limited to the protection of the University's business relationships and ongoing professional practices, substantial relationships with existing and prospective patients, customers and others, trade secrets and/or other valuable confidential business and professional information, trade names, trademarks and service marks, and the specialized and enhanced training and research opportunities provided by the University to its faculty.

(2) Where justified by these concerns, the College of Medicine is authorized to include, as a condition of appointment to a faculty ~~teaching~~ position requiring clinical practice, a restrictive covenant (with appropriate accompanying provisions) in the faculty contract and/or letter of appointment. Such a restrictive covenant shall prohibit the faculty physician from entering into a clinical practice within a radius of twenty-five (25) miles from a situs of the faculty member's clinical teaching assignment during the previous two years, for a period of one (1) year following the cessation of employment by the faculty physician (whether by resignation, retirement, or the expiration, non-renewal or other termination of employment) with the University. Such restrictive covenant~~-~~ shall not apply to ~~part-time or~~ affiliate clinical faculty in the College of Medicine or to those part-time clinical faculty specifically approved in writing by the Dean of the College. ~~hired prior to the effective date of this regulation.~~

(3) Additionally, the foregoing restrictive covenant shall not apply to (i) a full-time faculty position taken to work at the main campus of any fully accredited medical school in Florida; (ii) clinical activities at any of FAU's College of Medicine graduate medical education consortium hospitals, provided that approval for such exception is granted by a majority of the board of such consortium; or (iii) clinical activities agreed to under a pre-existing relocation arrangement with a consortium hospital, the terms of which have not yet been fulfilled but are limited in duration.

(4) By way of example but not limitation, remedies for breach of this restrictive covenant shall include all available remedies provided by law and/or equity, including but not limited to those remedies provided by Chapter 542, Florida Statutes.

(5) Restrictions on the practice of medicine by faculty physicians during the term of their employment with the College of Medicine are described in University Regulation 9.001 (Faculty Practice Plan).

Specific Authority: Article IX of the Florida Constitution, 1001.706 F.S., Board of Governors Regulation 1.001, 542.335 F.S. History—New 11-16-16; Amended 6-2-2020.