



WEEKLY SESSION UPDATE

April 19, 2019

The legislature began their annual Easter/Passover break last Friday. As a result, there has not been any official business, so it has been a very quiet week around the capitol. Below are a few items of interest – full updates will resume next week.

[As lawmakers take a holiday break, here's where things stand at the Minnesota Legislature](#)

Via MinnPost

As he was sending the Senate off for its Easter/Passover break, Senate Majority Leader Paul Gazelka delivered something of a homily. After wishing Jews and Christians the best for the two holidays, the Nisswa Republican urged senators to use the week off to "relax and build strength" for the final month of session.

[Gov. Tim Walz appoints Tarek Tomes commissioner of IT agency](#)

Via Star Tribune

Gov. Tim Walz appointed Tarek Tomes to be commissioner of Minnesota IT Services, ending a lengthy search to lead one of state government's most important and beleaguered agencies. Tomes, 50, brings more than two decades of private and public sector technology experience to the job, most recently as the city of St. Paul's chief innovation officer.

Additional reading: [A full Cabinet: The commissioners behind the Walz administration](#)

[Should doctors be subject to noncompete contracts?](#)

Patients often are caught in the middle of the legal debate.

Via Star Tribune – By Michelle Andrews New York Times

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When Don Cue developed a bladder infection last fall, he called his longtime doctor's office. A receptionist told him that his physician, Dr. Mark Kellerman, no longer worked at the Iowa Clinic in Des Moines, a large multispecialty group. She refused to divulge where he had gone.

"As a patient, 'scared' is too strong a word, but my feeling is, 'What do I do now?'" said Cue, 58.

It was only later that he learned his doctor planned to start a practice with clinic colleagues, and, under the terms of their contract with their former employer, the doctors were banned for a year from practicing within 35 miles of the clinic and from recruiting former patients to follow them.

Contracts with noncompete clauses — common in many commercial sectors — are becoming more prevalent in health professions. One survey of nearly 2,000 primary care physicians in five states found that roughly 45 percent were bound by such clauses. But what might be good business can be bad for patient care — and certainly disquieting for those whose doctors seem to simply disappear.

Continuity of care is important, doctors say, especially for patients with ongoing medical issues. Cutting off access to a doctor is different from disrupting someone's relationship with a favorite hairstylist or money manager, they say.

"When doctors want to move from one practice to another, if they've got good therapeutic relationships with their patients, you'd think that public policy would want them to continue to treat these patients that trust them," said Judy Conti, government affairs director at the National Employment Law Project.

Des Moines lawyer Charlie Wittmack is representing Kellerman and two other former doctors at the Iowa Clinic. The three of them were fired after they revealed plans to launch their own clinic. They have filed a suit asking the court to declare the physicians' restrictive covenant provisions unenforceable.

Wittmack said the controversy there was "tragic" for patients who were forced to abandon doctors who had been following their cases for years. Ed Brown, the clinic's chief executive, said the noncompete agreements actually benefit patients because they ensure that the clinics can provide reliable services.

"Noncompetes are good for the patients because they help to provide stability within a practice and ensure continuity of care," Brown said. Further, he added, noncompetes protect physicians by ensuring that other physicians in the practice are committed to it and can't abandon it without proper notice.

Even when patients go sleuthing to find their doctors' new offices, they may not be accepted into those practices. Hospitals and clinics say they have little choice but to respect the terms of business agreements that others have negotiated.

Whether noncompete clauses are binding in health care — especially when patient care is disrupted — is a point legal scholars debate. Courts may weigh whether enforcing a noncompete clause would create a physician shortage in a particular region or specialty. The guiding principle is patient choice, said David Clark, a partner in the New York office of the law firm Epstein Becker Green who has analyzed state noncompete statutes in health care.

"No court is going to deny a patient who wants to go see a doctor of her choice," Clark said.

The American Medical Association doesn't oppose restrictive covenants outright, although its policy notes they can limit patients' choices. "To the extent that these agreements disrupt continuity of care and disrupt patient choice, this is of great concern to the AMA," said Dr. Patrice Harris, the organization's president-elect.

Additional articles of interest

Session Daily: [Increased oversight of pharmacy benefit managers aimed at improved transparency, lowered costs](#)

[Omnibus tax bill advances amid stark partisan disagreement](#)

[Conformity — and change — key to House tax bill](#)

[House tax bill focuses upon fairness, filing ease, cuts and credits](#)