

FILED
04-24-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CV001021
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH__

ORTHOPEDIC AND SPINE CENTERS
OF WISCONSIN, S.C.
2501 W. Beltline Hwy, Suite 601
Madison, WI 53713,

JASON M. SANSONE, M.D.
4921 Tonyawatha Trail
Monona, WI 53716,

BRIAN KEYES, D.O.
196 Tipperary Road
Brooklyn, WI 53521,

KASHIF ALI, M.D.
1007 Fish Hatchery Road, Apt. 511
Madison Wisconsin, 53715,

AARON CARPIAUX, M.D.
1221 2nd Street
Baraboo, Wisconsin 53913,

Case No: _____
Case Code: 30701

RAJIT CHAKRAVARTY, M.D.
1104 Red Rock Lane
Middleton, WI 53562,

JAMES PROSSER, D.O.
9 Sauk Creek Circle
Madison WI 53717

JOSEPH SIZENSKY, M.D.
1010 Parkview Drive, Unit 4
Milton, WI 53563,

BRIAN STEFFIN, M.D.
5759 Ballina Parkway
Fitchburg WI 53711

DAVID WOLFF, M.D.
5663 Ashbourne Lane
Fitchburg, WI 53711

RICHARD GLAD, M.D.
5128 Spring Court
Madison, WI 53705,

and

DAYTON OPEL, M.D.
6525 Clovernook Road
Middleton, WI 53562,

Plaintiffs,

v.

DEAN HEALTH SYSTEMS INC.
d/b/a SSM HEALTH DEAN MEDICAL GROUP
1808 W. Beltline Highway
Madison, WI 53713

Defendant.

SUMMONS

THE STATE OF WISCONSIN TO THE DEFENDANTS NAMED ABOVE:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Clerk of Court, 215 S. Hamilton Street, Room 1000, Madison, Wisconsin 53703, and to John N. Giftos, Esq. and Roisin H. Bell, Esq., the Plaintiffs' attorneys, whose address is Bell Giftos St. John LLC, 5325 Wall Street, Suite 2200, Madison, Wisconsin 53718. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated this 24th day of April, 2023.

BELL GIFTOS ST. JOHN LLC

/s/ John N. Giftos

John N. Giftos, SBN 1054853

Roisin H. Bell, SBN 1036098

5325 Wall Street, Suite 2200

Madison, WI 53718

Phone: (608) 216-7990

Fax: (608) 216-7999

Email: jgiftos@bellgiftos.com

rbell@bellgiftos.com

Counsel for Plaintiffs

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Plaintiffs,

v.

DEAN HEALTH SYSTEMS INC.
d/b/a SSM HEALTH DEAN MEDICAL GROUP
1808 W. Beltline Highway
Madison, WI 53713

Defendant.

COMPLAINT

Plaintiffs, Orthopedic and Spine Centers of Wisconsin, S.C. ("OSCoW"), Jason M. Sansone, M.D., Brian Keyes, D.O., Kashif Ali, M.D., Aaron Carpiaux, M.D., Rajit Chakravarty, M.D., James Prosser, D.O., Joseph Sizensky, M.D., Brian Steffin, M.D., Richard Glad, M.D., David Wolff, M.D., and Dayton Opel, M.D. ("Physicians"), sue Dean Health Systems, Inc., d/b/a SSM Health Dean Medical Group ("Dean") and alleges as follows:

THE PARTIES

1. OSCoW is a Wisconsin service corporation located at 2501 W. Beltline Highway, Suite 601, Madison, Wisconsin 53713. It is an independent medical practice group formed in November 2022 by board-certified and fellowship-trained physicians who provide comprehensive orthopedic expertise to patients in Wisconsin in a wide variety of areas, including orthopedic surgery, sports medicine, hand and upper extremity care, joint replacement, spine care and pediatric orthopedic care.

2. Dr. Sansone is an adult resident of the state of Wisconsin who resides at 4921 Tonyawatha Trail, Monona, Wisconsin 53716. He is a board-certified and fellowship-trained orthopedic surgeon specializing in shoulder replacement and orthopedic traumatology. Dr. Sansone is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Sansone was employed as an orthopedic surgeon by Dean from August 2013 until November 9, 2022.

3. Dr. Keyes is an adult resident of the state of Wisconsin who resides at 196 Tipperary Road, Brooklyn, Wisconsin 53521. He is a board-certified and fellowship-trained orthopedic surgeon specializing in adult joint reconstruction and orthopedic traumatology. Dr. Keyes is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Keyes was employed as an orthopedic surgeon by Dean from August 2018 until November 14, 2022.

4. Dr. Ali is an adult resident of the state of Wisconsin who resides at 1007 Fish Hatchery Road, Apartment 511, Madison, Wisconsin 53715. He is a board-certified and fellowship-trained orthopedic surgeon specializing in sports medicine. Dr. Ali is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Ali was employed as an orthopedic surgeon by Dean from October 2014 until December 31, 2022.

5. Dr. Carpiaux is an adult resident of the state of Wisconsin who resides at 1221 2nd Street, Baraboo, Wisconsin 53913. He is a board-certified and fellowship-trained orthopedic surgeon specializing in sports medicine. Dr. Carpiaux is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to

his relationship with OSCoW, Dr. Carpiaux was employed as an orthopedic surgeon by Dean from August 2017 until December 31, 2022.

6. Dr. Chakravarty is an adult resident of the state of Wisconsin who resides at 1104 Red Rock Lane, Middleton, Wisconsin 53562. He is a board-certified and fellowship-trained orthopedic surgeon specializing in adult joint reconstruction. Dr. Chakravarty is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Chakravarty was employed as an orthopedic surgeon by Dean from August 2015 until December 31, 2022.

7. Dr. Prosser is an adult resident of the state of Wisconsin who resides at 9 Sauk Creek Circle, Madison, Wisconsin 53717. He is a board-certified and fellowship-trained orthopedic surgeon specializing in sports medicine. Dr. Prosser is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Prosser was employed as an orthopedic surgeon by Dean from August 2005 until December 31, 2022.

8. Dr. Sizensky is an adult resident of the state of Wisconsin who resides at 1010 Parkview Drive, Unit 4, Milton, Wisconsin 53563. He is a board-certified and fellowship-trained orthopedic surgeon specializing in foot and ankle reconstruction. Dr. Sizensky is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Sizensky was employed as an orthopedic surgeon by Dean from March 2022 until December 31, 2022.

9. Dr. Steffin is an adult resident of the state of Wisconsin who resides at 5759 Ballina Parkway, Fitchburg, Wisconsin 53711. He is a board-certified and fellowship-trained orthopedic surgeon specializing in adult joint reconstruction. Dr. Steffin is a founding member and employee

of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Steffin was employed as an orthopedic surgeon by Dean from August 2007 until December 31, 2022.

10. Dr. Glad is an adult resident of the state of Wisconsin who resides at 5128 Spring Court, Madison, WI 53705. He is a board-certified orthopedic surgeon specializing in sports medicine and general orthopedics. Dr. Glad is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Glad was employed as an orthopedic surgeon by Dean from July 1988 until December 31, 2022.

11. Dr. Wolff is an adult resident of the state of Wisconsin who resides at 5663 Ashbourne Lane, Fitchburg, Wisconsin 53711. He is a board-certified and fellowship-trained orthopedic surgeon specializing in adult joint reconstruction. Dr. Wolff is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Wolff was employed as an orthopedic surgeon by Dean from August 1995 until December 31, 2022.

12. Dr. Opel is an adult resident of the state of Wisconsin and resides at 6525 Clovernook Road, Middleton, Wisconsin 53562. He is a board-certified and fellowship-trained orthopedic surgeon specializing in hand and upper extremity surgery. Dr. Opel is a founding member and employee of OSCoW, where he currently practices orthopedic medicine, including orthopedic surgery. Prior to his relationship with OSCoW, Dr. Opel was employed by Dean as an orthopedic surgeon from September 2019 until December 31, 2022.

13. Dean is a Wisconsin corporation located at 1808 West Beltline Highway, Madison, Wisconsin 53713. Dean provides primary and specialty medical care pursuant to an integrated model of care in a geographic area limited to eighteen counties in south central Wisconsin.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Dean pursuant to Wis. Stat. §§ 801.05(1)(c)-(d) because Dean is a domestic corporation engaged in substantial business activities within Wisconsin.

15. Venue is proper in this County pursuant to Wis. Stat. § 801.50(2)(c) because Dean resides in and does substantial business in this County.

STATEMENT OF FACTS

I. THE PHYSICIANS' EMPLOYMENT AT DEAN WAS GOVERNED BY AN EMPLOYMENT AGREEMENT CONTAINING COVENANTS RESTRICTING THEIR ABILITY TO TREAT OR SOLICIT EXISTING PATIENTS.

16. Dean entered into employment agreements with each of the Physicians at the outset of their Dean employment ("the Employment Agreements").

17. The Employment Agreements all included an identical section 5 entitled "Covenant Not To Compete" that contained several covenants. Attached hereto as **Exhibit A** is a true and correct copy of one of the Employment Agreements each of the Physicians signed.

18. The stated purpose of section 5 was to "permit [Dean] to maintain patient relationships without competition from [the Physicians.]" (Ex. A., § 5.3.)

19. Section 5 contained a covenant restricting the Physicians from treating and soliciting their "Existing Patients" for 2 years after the Physicians' Dean employment ended. It states:

5.1 Competition Restrictions.

Doctor agrees that, for a period of two years after Doctor's employment with the Corporation ends for any reason, Doctor will not:

(1) in the same medical specialty (e.g., cardiology, urology, family practice, internal medicine) in which Doctor practiced with the Corporation directly or indirectly provide medical services to any existing patient to whom Doctor treated on behalf of the Corporation. An existing patient is any patient to whom Doctor has provided medical services within three years of Doctor's departure;

(2) directly or indirectly solicit or encourage any patient covered by subparagraph (1) to obtain medical care from a physician or other health care professional who is not employed by the Corporation where such medical care is available from the Corporation.

II. THE PHYSICIANS' SCOPE OF PATIENT CARE AT DEAN INCLUDED CLINICAL CARE, SURGERIES, CONSULTATIONS, AND URGENT TRAUMA CARE.

20. During their Dean employment, the Physicians provided orthopedic care and treatment to various patients. Care and treatment varied by patient, and could be as simple as a single, one-time fifteen (15) minute clinic visit and as complex as a specialized surgical procedure with months of follow-up care.

21. Additionally, the Physicians provided other Dean providers with requested orthopedic consultations. Those consultations were often limited to communications with the Dean provider, a review of a patient's chart, followed by a treatment recommendation. In some instances, the patients were unaware that the Physicians were consulting on and providing medical advice related to the patients' care and treatment.

22. The Physicians also provided on-call urgent and emergent orthopedic care and treatment at St. Mary's Hospital's Level II trauma center in Madison, as well as at other emergency departments owned by Dean or its affiliate organizations within Dean's 18-county footprint.

23. The Physicians provided this urgent and emergent orthopedic care and treatment for anyone that was brought or came to the emergency departments. It included, for example: (1)

Dean patients with whom the Physicians had no prior relationship and no subsequent relationship after urgent or emergent care was provided; (2) Dean patients for whom care was provided while the patient was heavily sedated or unconscious during treatment; (3) non-Dean patients who may have obtained primary medical care from outside the Dean network from Dean's competitors; and (4) non-Dean patients who lived and resided outside Dean's 18-county footprint and just happened to be injured while visiting the area.

III. THE PHYSICIANS RESIGN FROM DEAN AND FORM AN INDEPENDENT ORTHOPEDIC PRACTICE.

24. In or about November 2021, Dean tasked its orthopedic surgeons - including the Physicians - to think about their professional futures and the future of orthopedic medicine at Dean.

25. Already disenchanted with their Dean employment, the orthopedic surgeons were grateful for the opportunity to be heard and took the assignment seriously. They collectively spent the next few months meeting to discuss their Dean employment, envisioning what they wanted for their professional futures and exploring a variety of possible options to propose to Dean to make their futures more professionally fulfilling.

26. On or about April 19, 2022, Dr. Sansone - the orthopedic surgeons' designated Dean liaison - met with Dr. Mark Thompson, Dean's Chief Clinical Officer ("the April Meeting") to share the results of the orthopedic surgeons' efforts.

27. During the April Meeting, Dr. Sansone shared with Dr. Thompson the orthopedic surgeons' collective desire to have autonomy over their practice. Specifically, Dr. Sansone presented Dr. Thompson with the orthopedic surgeons' proposal to leave as a group, form a separate legal entity and have that entity partner by contract with Dean to be Dean's exclusive orthopedic provider.

28. Dean rejected the proposal but claimed it wanted to continue working with the orthopedic surgeons regarding their desire for more professional autonomy.

29. Thereafter, in June 2022, Dr. Sansone again met with Dr. Thompson (the “June Meeting”). Dr. Sansone submitted a written proposal to Dean (“the June Proposal”). The June Proposal asked that Dean reconsider entering an exclusive provider contract with the orthopedic surgeons as a fully independent practice group, but then offered the possibility of the group operating as a division of Dean.

30. Following the June Meeting, Dean stated it was not willing to compromise its integrated model of care, rejected the June Proposal and confirmed it had no interest in further entertaining the orthopedic surgeons’ desire for more professional autonomy.

31. So, on September 23, 2022, fifteen (15) of Dean’s seventeen (17) orthopedic surgeons - including the Physicians - sent a letter to Dean providing the required 90 days’ notice to exercise their contractual right to terminate their employment.

32. Ultimately, only the Physicians ended up leaving Dean. Their resignation was effective December 31, 2022. However, the effective date of Dr. Sansone’s resignation was ultimately moved forward to November 9, 2022. Similarly, the effective date of Dr. Keyes’ resignation was moved forward to November 14, 2022.

33. On January 1, 2023, the Physicians opened OSCoW, their new independent orthopedic practice.

34. In their roles as orthopedic surgeons for OSCoW, the Physicians provide a wide variety of orthopedic care both in clinic and surgical settings.

35. Additionally, OSCoW has entered professional service agreements (“PSAs”) to provide orthopedic services at rural Wisconsin hospitals where there is limited or no orthopedic care available.

36. OSCoW is not limited to providing medical care at facilities and hospitals within Dean’s 18-county footprint.

IV. THE PHYSICIANS AGREE NOT TO TREAT OR SOLICIT EXISTING PATIENTS AT OSCoW.

37. After word of the Physicians’ new practice at OSCoW spread, many patients - including some who would be considered “Existing Patients” for the Physicians - began to contact OSCoW seeking the Physicians’ care and treatment.

38. While the Physicians disputed the validity and enforceability of the restrictions outlined at sections 5.1(1) and (2) of the Employment Agreement, they collectively made the decision to take all reasonable steps to abide by those provisions. This is because the Physicians wanted to avoid further conflict with Dean and, instead, mutually and amicably co-exist with Dean in the medical community for the best interests of patient care.

39. To that end, each of the Physicians decided that they would not treat any of their respective, former patients meeting the definition of an “Existing Patient” under the Employment Agreement. Likewise, each of the Physicians decided that they would not take any action that could reasonably be deemed solicitation of their respective “Existing Patients”.

40. The Physicians’ decision to abide by the patient competition restrictions outlined at sections 5.1(1) and (2) of the Employment Agreement was communicated to Dean.

V. DEAN SUES TWO PHYSICIANS FOR CONDUCT DURING EMPLOYMENT THAT ALLEGEDLY VIOLATES THE EMPLOYMENT AGREEMENT.

41. On or about November 30, 2022, Dean filed suit against Drs. Sansone and Keyes, as well as Madison Orthopedics, LLC (“Madison Ortho”) in Dane County Circuit Court, Case No. 22-CV-2996 (“the Initial Lawsuit”).

42. In its Initial Lawsuit, Dean claimed that Drs. Sansone and Keyes’ conduct during the last year of their employment breached the Employment Agreement. Dean claimed that Drs. Sansone and Keyes improperly planned a competing business, solicited employees, solicited patients and used Confidential Information during work hours and while using company property. (Initial Lawsuit, Compl., Counts I, III).

43. With one exception not relevant to this lawsuit, Dean did not sue Drs. Sansone and Keyes under the Employment Agreement for any conduct that occurred following their departure from Dean.¹ Specifically, Dean did not sue Sansone or Keyes for breaching sections 5.1(1) or (2) regarding the treatment and solicitation of “Existing Patients” after their employment ended at Dean.

44. Dean did not name any of the other Physicians as defendants in the Initial Lawsuit.

VI. DEAN IMPLEMENTS A NO REFERRAL POLICY DIRECTED AT THE PHYSICIANS.

45. Following the Physicians’ departure from Dean, Dean directed its physicians not to refer any patients to the Physicians, even if the Dean physicians thought it was in the best interests of patient care to do so.

46. In fact, upon information and belief, rather than refer *any* Dean patient to the Physicians, Dean directed its physicians to refer Dean patients to Dean’s competitors, like UW

¹ Dean did bring a separate breach of contract action against Dr. Sansone arising from a non-compete provision specific to Sansone’s regional directorship position with Dean. (Initial Lawsuit, Compl., Count II.)

Health, when Dean lacked the capacity or specialization to treat the patient. This referral practice extended even to “Existing Patients” who - when faced with no capacity or specialization at Dean - had expressly asked for and been denied Dean authorization to see the Physicians.

VII. DEAN ACCUSES SOME PHYSICIANS OF BREACHING THEIR POST-EMPLOYMENT RESTRICTIVE COVENANTS BY TREATING OR SOLICITING EXISTING PATIENTS.

47. On or about March 9, 2023, and despite knowing full well that both individuals had counsel, Dean had a process server hand deliver a cease and desist letter to the homes of Drs. Chakravarty and Opel (“the Cease and Desist Letter”). In the letter, Dean accused each of the physicians of breaching the patient competition restrictions outlined at section 5.1(1) and (2) of the Employment Agreements by allegedly soliciting and treating a particular, but unnamed, “Existing Patient”. Dean also threatened suit against both doctors.

48. Drs. Chakravarty and Dr. Opel conducted a thorough review of their OSCoW appointments and verified that - consistent with the decision the Physicians had made - neither Physician had seen any of their respective “Existing Patients” or referred any of their respective “Existing Patients” to OSCoW. Counsel for Drs. Chakravarty and Opel then advised Dean as to the same and demanded that Dean withdraw its Cease and Desist Letter unless it could provide facts to substantiate the letter.

49. To date, Dean has provided no legitimate basis for the Cease and Desist Letter and has refused to withdraw it.

VIII. DEAN FLAGS THE CHARTS OF ANY PATIENT WHO SAW ANY OF THE PHYSICIANS WHILE THEY WORKED AT DEAN.

50. At or around the same time, Dean began implementing a process whereby it placed a “flag” in the electronic medical charts of all patients who Dean believed met the definition of an “Existing Patient” for any of the Physicians.

51. Specifically, Dean made the following notation in Dean patients' medical records: "SSM WI Non-Compete Patient". Schedulers viewing a patient's medical records would see this notation when opening the patient's file in an attempt to schedule the patient with a medical provider.

52. However, the notation does not specify for which particular Physician the patient was an "Existing Patient", and as a result, the flag has caused schedulers to wrongfully believe that the patient could not be scheduled with *any* of the Physicians.

53. This, in turn, has caused patients who were not "Existing Patients" of a particular Physician, and who wanted to and could properly be seen by a particular Physician, to not get scheduled with that Physician.

IX. DEAN RESTRICTS THE PHYSICIANS FROM DISTRIBUTING PROVIDER BIO SHEETS THAT ARE REQUESTED BY DEAN'S STAFF AND USED BY OTHER SURGEONS.

54. Additionally, on or about March 22, 2023, at Dean's direction, Maureen Murphy, chief medical officer at SSM St. Clare Hospital in Baraboo, accused Dr. Carpiaux of improper patient solicitation because he provided a "Provider Bio Sheet" to Dean's day surgery/PACU nurses.

55. The Provider Bio Sheet is a piece of paper with the pictures, names and contact information of surgeons performing surgeries at St. Clare Hospital. Providing hospital staff and doctors with a Provider Bio Sheet is common practice for all surgeons, not just the Physicians.

56. The Provider Bio Sheet is not provided to patients. Rather, Dr. Carpiaux provided the Provider Bio Sheet to Dean's day surgery/PACU nurses because those individuals had specifically requested it to aid in the delivery of care and treatment to patients recently receiving surgeries from Dr. Carpiaux.

X. DEAN CLAIMS THE PHYSICIANS' PRESS INTERVIEWS ABOUT THEIR NEW PRACTICE ARE IMPROPER PATIENT SOLICITATIONS.

57. Dean has also claimed that if the Physicians talk to the press about OSCoW or their new practice, they are running afoul of the patient solicitation restriction outlined at section 5.1(2) of the Employment Agreements.

58. Specifically, in the Initial Lawsuit, Dean has argued that Dr. Sansone's interview with the Wisconsin State Journal in November 2022 about the Physicians' then future independent practice was an effort to "indirectly solicit ... previous and current Dean patients to [the] new practice." (Initial Lawsuit, Dean's Response Br. at 38.) Dean has stated that it "may seek to amend its Complaint in the future to allege [defendants have breached the post-termination restrictive covenants in their standard physician employment agreements]." (*Id.* at 13, n. 5.)

DECLARATORY JUDGMENT ACTION

59. Under the Wisconsin Declaratory Judgment Act, Wisconsin courts "have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed." Wis. Stat. § 806.04(1). According to the Act, "[a] person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." *Id.* § 806.04(2). The power of the Wisconsin courts to grant declaratory relief is to "be liberally construed and administered." *Id.* § 806.04(12).

60. There is an existing controversy between OSCoW, the Physicians and Dean regarding (a) the validity and enforceability of sections 5.1(1) and (2) of the Employment Agreements ("the Challenged Restrictive Covenants") and (b) whether the Plaintiffs' conduct violates any of the Challenged Restrictive Covenants.

61. Specifically, Plaintiffs believe the Challenged Restrictive Covenants cannot satisfy the requirements of Wis. Stat. § 103.465 because they (a) are not reasonable and necessary for the protection of Dean's stated interest in protecting its patient base from competition; (b) lack a reasonable territorial limit; (c) are harsh and oppressive as to the Physicians; and (d) are contrary to public policy.

62. In particular, the Challenged Restrictive Covenants prohibit treatment or solicitation of patients (i) who have no cognizable or significant prior relationship with the Physicians, and often may not even know who the Physicians are; (ii) who are no longer or may never have been Dean's patients; (iii) who Dean is not competing for or where the Physician is working for a health care company or hospital for which Dean does not compete; and (iv) who Dean has neither the ability or capacity to treat. Further, the Challenged Restrictive Covenants prevent the Physicians from engaging in the type of competition for patients that a stranger could engage in. Additionally, the Challenged Restrictive Covenants force the Physicians to choose between either providing urgent and emergent medical care to an Existing Patient and face legal action from Dean or turning the Existing Patient away, even though the Physicians may be the closest or only urgent orthopedic care available to the Existing Patients. Finally, these restrictions directly interfere with patient choice and result in patients not receiving timely care.

63. And even if the Challenged Restrictive Covenants are valid and enforceable, Plaintiffs believe that the Physicians' conduct that Dean has complained of to date does not violate those provisions.

64. This controversy is substantial and justiciable because it affects the parties in a concrete manner so as to provide the factual predicate for reasoned adjudication. The controversy is also of sufficient immediacy to warrant the issuance of a declaratory judgment. A declaratory

judgment will conclusively clarify the legal rights and obligations of the parties and will be of practical assistance to them. The judgment sought will also terminate the controversy and remove uncertainty regarding the validity and enforceability of the Challenged Restrictive Covenants and the future conduct of Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

- A. A declaration that the Challenged Restrictive Covenants do not meet all of the requirements of Wis. Stat. § 103.465 and are therefore invalid and unenforceable in their entirety.
- B. A declaration that even if one or more of the Challenged Restrictive Covenants is valid and enforceable, the conduct complained of by Dean does not violate the Challenged Restrictive Covenants.
- C. Awarding Plaintiffs their attorneys' fees and costs.
- D. Such other and further relief that the Court deems appropriate.

Dated this 24th day of April, 2023.

BELL GIFTOS ST. JOHN LLC

/s/ John N. Giftos

John N. Giftos, SBN 1054853
Roisin H. Bell, SBN 1036098
5325 Wall Street, Suite 2200
Madison, WI 53718
Phone: (608) 216-7990
Fax: (608) 216-7999
Email: jgiftos@bellgiftos.com
rbell@bellgiftos.com

Counsel for Plaintiffs