

## Referral sources may be a protected legitimate business interest in Florida



Courtney G. Tito, Peter M. Bernhardt | Tuesday, October 17, 2017

On Sept. 14, 2017, the Supreme Court of Florida issued an opinion in which they held that home health service (HHS) referral sources may be a protected legitimate business interest<sup>1</sup>. It is important to note that the court's opinion, although focused on home health referral sources, is not limited to the home health industry. Accordingly, we recommend you review the language in your operative restrictive covenant agreements to determine if revisions are necessary or possible in accordance with this new opinion.

In the opinion (which consolidated appeals from two conflicting district court opinions), the court resolved prior conflicting case law from different districts in Florida as a result of this opinion. The underlying cases dealt with violations of restrictive covenants by employees who worked at different HHS agencies. The relevant Florida statute is §542.335, under which a contract which places restrictions on competition must involve a legitimate business interest to be enforceable. The statute provides a non-exhaustive list of legitimate business interests.

The court determined in the case at hand that HHS referral sources may be a protected legitimate business interest under §542.335 and in doing so acknowledged that the statute was not designed or intended to be an exhaustive list of legitimate business interests. The court held that the statute had no exclusion for referral sources.

The Supreme Court of Florida decided that trial courts must engage in fact and industry specific determinations when reviewing business interests that are not expressly listed in the statute. Specifically,

## Referral sources may be a protected legitimate business interest in Florida

---

as to HHS referral sources, the court stated that referral sources are an HHS's most important business asset and accordingly follows the legitimate business interests listed in the statute. The court concluded "that home health referral sources may be a protected legitimate business interest within the meaning of section 542.335, depending upon the context and proof adduced. Certain industries, such as home health services, present special facts where protecting referral sources may be necessary to prevent unfair competition."

This case retreats from the conclusions in a 2006 case from the Florida 5th District Court of Appeal, *Florida Hematology Oncology v. Tummala*, in which the 5th DCA held that it is contrary to the plain language of §542.335 to recognize referral sources as a protected legitimate interest.

For further information on any of the issues discussed above, please contact one of the attorneys listed below.

[1] *White v. Mederi Caretenders Visiting Services of Southeast Florida, LLC*, No. SC16-28 and *American Home Therapy, Inc. v. Hiles*, No. SC16-400.

---



**Courtney G. Tito**

[Team member bio](#)

---



**Peter M. Bernhardt**

[Team member bio](#)