The subject of noncompetition agreements has been addressed in previous Legal Briefs; however, new issues arise regarding the enforceability of such agreements. Before examining some recent holdings, here is a brief summary of the status of such agreements:

- In most states these agreements will be enforced if they are reasonable as to time and territory.
- In a few jurisdictions, either as a result of statute or court determination, they will not be enforced except in the sale of a practice.
- In some states, either by statute or court determination, the court will “reform” an unreasonable limitation either of time or territory and then enforce the agreement.
- Courts are more likely to enforce an agreement involving a specialty practice than they are to enforce an agreement involving general practice.
- A provision for the payment of liquidated damages (a set amount stated in the contract) may be upheld by the courts, which would not enforce a restrictive covenant by injunction, because paying the damages would then permit the covenantor to practice in the proscribed territory. This could overcome a court’s unwillingness to deny the public the services of the covenantor in any area where he or she chooses to practice. This feeling is strong enough with respect to the legal profession that, either by statute or court rule, covenants forbidding an employee to practice within a proscribed area after leaving the firm are unenforceable. As an example, Illinois Supreme Court Rule 5.6 provides that, “A lawyer shall not participate in offering or making a part-
agreement. The consideration or benefit to the employee would be continuation of employment because failure to sign the noncompetition agreement could mean termination of employment.

**Off-setting claims in a practice buy-sell agreement**—The seller in a veterinary practice buy-sell agreement sued the purchaser for an unpaid installment. The purchaser counterclaimed, alleging that the seller had breached a noncompetition clause in the buy-sell agreement. A Missouri (Kansas City) Court held for both parties. In *Antioch Laurel Veterinary Hospital v Kolich* (Jackson Co MO, CV 99-214363), the jury thought the parties should be treated equally and awarded $18,250 to the seller for failure of the purchasers to make a payment as required, and awarded $18,250 to the purchaser, because the seller had breached the noncompetition agreement. There could very well be an appeal from this holding, but that information is not available at this time of writing.

**Telephone calls from the forbidden territory**—In *Bloomington Urological Assoc v Scaglia* (Ill App #4-96-1-1-8 [10/21/97]), the court held that a physician practicing outside an area proscribed by a noncompetition clause in a previous employment agreement did not violate that clause by taking telephone calls from within the proscribed area. The court also said that the keeping of records, scheduling, and billing within the proscribed area was not violative of the noncompetition agreement.

The law has not been completely written, and never will be, with respect to noncompetition agreements. With the growth in telecommunications in the medical and veterinary medical field, we can expect as yet unthought-of issues to arise.