FILED
JUN 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-174 / 89-1243

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GENE M. KUEHN, M.D., P.C., CS d/b/a ASSOCIATES IN OBSTETRICS & GYNECOLOGY,

Appellant,

vs.

MICHAEL W. FAUST, M.D.,

Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, J. W. Frye, Judge.

Plaintiff appeals from trial court's refusal to enforce covenant not to compete contained within an employment agreement. **AFFIRMED BY OPERATION OF LAW.**

James A. Lorentzen and Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellant.

Walter C. Schroeder of Schroeder & Anderson, Mason City, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ., but considered en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

AFFIRMED.

For affirmance: Schlegel, Sackett, and Habhab, JJ.

For reversal: Oxberger, C.J., and Donielson and Hayden, JJ.