



## New Restrictions on Physician Competition

by: Lisa M. Norris

In 2005, the Tennessee Supreme Court grabbed the attention of physician group practices across Tennessee when it rendered its decision in the case of Murfreesboro Medical Clinic, P.A. v. David Udom. In the Udom case, the Tennessee Supreme Court determined that physician non-compete agreements went against public policy in restricting a physician's right to practice and were, therefore, unenforceable unless specifically authorized by the legislature.

Well, the legislature has done just that. At the end of the 2007 Legislative Session, the Tennessee General Assembly passed a new law permitting physician non-compete agreements effective January 1, 2008 (Amending Tennessee Code Annotated, Title 63 with new designated § 63-1-148). The new law essentially allows physician practices to place non-compete clauses in physician employment contracts and in agreements for the purchase or sale of a physician practices. However, the new law does impose some restrictions on when non-compete agreements are permissible.

First, the new law does not apply to radiologists or emergency medicine physicians. All other physicians, dentists, ophthalmologists, psychiatrist, and chiropractors can be required to adhere to non-compete agreements. Also, the agreement must be in writing, signed by the parties and can restrict the physician for a maximum of two years with either (1) a

geographical limitation of ten (10) miles from the group's primary practice location, or (2) the county in which the practice is located. Alternatively, the physician practice may simply restrict the physician from practicing at a facility at which the physician practice currently provides services.

One interesting aspect of the new law is the exemption given to those physicians who have been employed or under contract with a group practice for six (6) years or longer. It is unclear whether such physicians are entirely exempt from non-compete agreements or only exempt from the restriction of practicing at facilities at which the physician group also provides services. Unless further clarified by future legislation, expect litigation to shape this area of physician non-compete law, much as it did in Udom.

Many physician groups are working on revising physician employment agreements in order to take advantage of this new law. Some agreements, however, already have in place a type of "springing non-compete" agreement making the non-compete valid upon the change of law. All physician employment agreements, however, should be carefully revisited in light of this new law effective January 1, 2008. Careful drafting and implementation of reasonable non-compete agreements is a prudent way to ensure compliance with the new statute and to help avoid litigation.

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