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Tennessee nixes non-compete agreements for physicians

By Michael G. McClory

A non-compete agreement restricting a physician's right to practice medicine is not enforceable in Tennessee unless expressly permitted by statute, the [Tennessee Supreme Court](#) has held.

In April 2000, the Murfreesboro Medical Clinic (MMC) and Dr. David Udom entered into an employment and stock transfer agreement. Pursuant to the agreement, MMC would employ Udom as a physician for a two-year period, renewable at the option of MMC. The agreement included a non-compete provision that restricted Udom from engaging in the practice of medicine within a 25-mile radius of the public square of Murfreesboro for a period of 18 months following the termination of the agreement. The agreement also included a provision that permitted Udom to buy out of the non-compete restrictions by paying MMC approximately one year's salary.

Near the end of the two-year period, MMC declined its option to renew the contract and advised Udom that it would enforce the non-compete provision. Over the course of two months, Udom investigated other employment options in the area and found several positions that he believed did not involve direct competition with MMC. However, MMC disagreed and reiterated its intent to enforce the non-compete provision.

Believing that the non-compete provision effectively precluded him from practicing medicine in Murfreesboro and surrounding communities, Udom told MMC in October 2002 that he intended to open a medical practice approximately 15 miles away from Murfreesboro. He also told MMC that he did not intend to pay the fee required by the buyout provision.

MMC sought an injunction to enforce the non-compete provision. On appeal, the Tennessee Court of Appeals agreed with the trial court that the provision was enforceable, but remanded the case for determination of the buyout amount.

Udom appealed to the Tennessee Supreme Court the "issue of whether covenants not to compete are enforceable against physicians." The state Supreme Court addressed this issue in three stages. First, it stated that generally non-compete agreements are enforceable where there is a legitimate business interest that needs to be protected, where the scope of the restrictions are reasonably designed to protect that interest and where the covenant is not in conflict with the public interest.

Second, the Tennessee Supreme Court concluded that there is a strong public interest against covenants that restrict the practice of medicine.

Third, saying it was "significant that the legislature chose not to validate all restrictive covenants applying to the physicians" in Tennessee Code Annotated § 63-6-204, a state statute enacted in 1998, the court determined that covenants not to compete are unenforceable against physicians.

[**Murfreesboro Medical Clinic P.A. v. David Udom, Tenn. Supreme Court, No. 03-00313, June 29, 2005.**](#)

Professional Pointer: A number of states are struggling with the question of whether non-compete agreements involving physicians are contrary to the public interest. In Tennessee, at least, the answer is

now clear. Health care employers in other areas of the country should carefully consider the enforceability in their state of restrictive covenants involving physicians.

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Editor's Note: This article should not be construed as legal advice.



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