

HEALTH LAW

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Tennessee General Assembly Breathes New Life Into Physician Covenants Not To Compete

June 15, 2007

After two years of political wrangling, the Tennessee General Assembly has revived physician covenants not to compete in Tennessee with the passage of House Bill 240 on June 12, 2007. The bill is the General Assembly's response to the Tennessee Supreme Court's 2005 decision in *Murfreesboro Medical Clinic, P.A. v. Udom*, which held that, except for those restrictions specifically permitted by statute, covenants not to compete restricting a physician's ability to practice medicine in a given area are void and unenforceable in Tennessee.¹

At the time of the *Murfreesboro Medical Clinic* case, the General Assembly had only specifically provided by statute that physicians' non-competes were enforceable when the employer was a hospital, an affiliate of a hospital or a faculty practice plan associated with a medical school.² For entities other than those specified by statute, Tennessee case law immediately prior to *Murfreesboro Medical Clinic* held that restrictive covenants against a physician were enforceable if the restrictions were reasonable. The Court's decision in *Murfreesboro Medical Clinic* reversed this case law and rendered unenforceable covenants not to compete typically found in employment and independent contractor arrangements between physicians and group practices.³ Under House Bill 240, reasonable physician covenants not to compete would once again be enforceable in Tennessee. If signed by Governor Bredesen, House Bill 240 will take effect January 1, 2008.

The provisions of House Bill 240 apply to podiatrists, chiropractors, dentists, optometrists, psychologists and most physicians. The bill does not, however, apply to physicians who specialize in emergency medicine or radiology, or to osteopathic physicians – covenants not to compete that restrict the rights of these physicians to practice their profession remain unenforceable in Tennessee.

¹ 166 S.W.3d 674 (Tenn. 2005).

² House Bill 240 should have no impact on the ability of these entities to continue to enforce restrictive covenants against physicians.

³ For a detailed analysis of *Murfreesboro Medical Clinic*, see our previous Health Law Update dated July 13, 2005, found at www.bassberry.com in the "Communications" center.

Restrictive Covenants in Employment and Independent Contractor Arrangements

The new legislation permits the restriction of a health care provider's right to practice his or her profession upon the termination or conclusion of an employment or independent contractor relationship if:

1. The restriction is set forth in an employment agreement or other written document signed by the parties;
2. The duration of the restriction is 2 years or less; and
3. The scope of the restriction is limited to either:
 - a. the greater of (i) a 10-mile radius from the primary practice site of the health care provider while employed or under contract or (ii) the county in which the primary practice of the health care provider was located while the health care provider was employed or under contract; or
 - b. any facility at which the employing or contracting entity provided services while the health care provider was employed or under contract.

Such restrictions, however, are not binding on health care providers who have been employed by, or under contract with, the employing or contracting entity for at least 6 years.

Restrictive Covenants in Connection with the Sale of a Practice

House Bill 240 also permits parties to enter into restrictive covenants with health care providers in conjunction with the purchase or sale of the provider's practice, or all or substantially all of the assets of the provider's practice, provided that the duration and the allowable area of the restrictions are reasonable under the circumstances. Under the statute, any restrictions agreed upon by the parties are presumed to be reasonable.

If you have any questions about this *Health Law Update* or any other healthcare matters, please contact one of the Bass Berry & Sims attorneys in our Healthcare Practice area listed at the end of this Update.

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