

SEVEN POINTS REGARDING ENFORCEMENT OF COVENANTS-NOT-TO-COMPETE (A/K/A "RESTRICTIVE COVENANTS" A/K/A "NONCOMPETITION AGREEMENTS") IN FLORIDA

(From a Presentation to the Orange County Medical Society on 3/21/2006)

1. They are enforceable in Florida, Sections 542.33 & 542.335, Florida Statutes, so don't believe what you hear or read.
2. There are many defenses available to a physician seeking to avoid enforcement of a restrictive covenant against him/her. For example, many are so poorly written that they are unenforceable, there may be a public policy reason against enforcement (e.g., health professional shortage area (HPSA)), there may not be a legitimate business that the employer has that needs to be protected, etc.
3. They can be defeated, but litigation is very expensive and you will need experts.
4. There is a recent case from the Tennessee Supreme Court that held that in Tennessee, restrictive covenants could not be enforced by the courts against physicians for public policy reasons; similar reasons may apply in Florida. The court cited, among other authority, the AMA's Code of Ethics. Click here to view the case, Murfreesboro Medical Clinic, P.A. v. Udom. [LINK-XX-1](#)
5. If you are trying to avoid enforcement of a restrictive covenant against you, negotiation is usually the best way out.
6. A former employer seeking to enforce a restrictive covenant will often write a demand letter to your present employer or group and threaten to sue it for "tortious interference with a contract," which may cause you to lose your present job.
7. If you must litigate this issue in order to avoid enforcement of a restrictive covenant against you, consult an attorney and carefully plan all of your actions ahead of time. Suing the employer first may be your best option. Do not just go out and violate the agreement and let the employer sue you.

**George F. Indest III, J.D., M.P.A., LL.M.
(Board Certified by The Florida Bar in Health Law)**