

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
**J. Thomas Rosch**  
**Edith Ramirez**  
**Julie Brill**  
**Maureen K. Ohlhausen**

**In the Matter of**  
**Renown Health,  
a corporation.**

**Docket No. C-4366**

**ORDER TO SUSPEND ENFORCEMENT OF RENOWN NON-COMPETE**

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by Renown Health of Reno Heart Physicians (“RHP”), and Renown Health (hereafter referred to as “Renown Health” or “Respondent Renown”) having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Renown with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent Renown, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent Renown of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Renown that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Renown has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues

its Complaint, makes the following jurisdictional findings, and issues the following Order Suspending Enforcement of the Renown Non-Compete (“Order to Suspend Enforcement”):

1. Respondent Renown is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its office and principal place of business located at 1155 Mill Street, Reno, Nevada 89502.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Renown, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, all the capitalized terms used in this Order to Suspend Enforcement, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders, the following definitions shall apply:

- A. “Decision and Order” means:
  1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
  2. the Final Decision and Order issued and served by the Commission.
- B. “Monitor” means any monitor appointed pursuant to Paragraph III of the Order to Suspend Enforcement.
- C. “Termination Date” means the date on which the Decision and Order becomes final, or on the date Renown Health receives notice from the Commission that a final Decision and Order will not be issued in this matter.

### **II.**

**IT IS FURTHER ORDERED** that Renown Health shall:

- A. From the date this Order to Suspend Enforcement becomes final until the Termination Date (“Suspension Period”), not enforce any Renown Non-Compete Provisions against any Cardiologist Employee for any activity that Cardiologist Employee engages in that Relates To providing Termination Notification; *provided, however,* that this Paragraph II.A does not prohibit Renown Health from enforcing any Renown Non-Compete Provisions against any

- Cardiologist Employee who terminates Contract Services prior to the date the Decision and Order becomes final.
- B. Within three (3) days from the date this Order to Suspend Enforcement becomes final, certify that Renown Health has sent by first-class mail, return receipt requested to each Cardiologist Employee the letter attached as Appendix A to this Order within two (2) days of the Agreement Containing Consent Order in this matter being placed on the public record.
  - C. For any activity Related To this Paragraph II, waive all rights to seek or obtain legal or equitable relief for breach of contract or for violation by any Cardiologist Employee of any Renown Non-Compete Provisions.
  - D. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from seeking to terminate Contract Services, pursuant to this Paragraph II.

- E. The purpose of this Paragraph is to ensure that those Cardiologist Employees who seek to terminate their Contract Services can offer Cardiology Services in a Reno Cardiology Practice in competition with Renown Health and to remedy the lessening of competition alleged in the Commission's Complaint.

### **III.**

**IT IS FURTHER ORDERED** that:

- A. Judge Charles McGee shall be appointed Monitor to assure that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than one (1) day after the Commission accepts the Order to Suspend Enforcement issues, Renown Health shall, pursuant to the Monitor Agreement, attached as Appendix B and Confidential Appendix B-1 to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform its duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Renown Health, which consent shall not be unreasonably withheld. If Renown Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Renown Health of the identity of any proposed Monitor, Renown Health shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Renown Health shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all

the rights and powers necessary to permit the Monitor to monitor Renown Health's compliance with the terms of this Order and the Order to Suspend Enforcement in a manner consistent with the purposes of this Order.

- D. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Renown Health, which consent shall not be unreasonably withheld.
- E. Renown Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
  - 1. The Monitor shall have the power and authority to monitor Renown Health's compliance with the terms of this Order to Suspend Enforcement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order to Suspend Enforcement and in consultation with the Commission, including, but not limited to:
    - a. receiving Termination Notification from Cardiologist Employees;
    - b. notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Notification; and
    - c. assuring that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
  - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
  - 3. The Monitor shall serve for such time as is necessary to monitor Renown Health's compliance with the Paragraph II.
  - 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Renown Health's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Renown Health's compliance with its obligations under this Order to Suspend Enforcement. Renown Health shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Renown Health's compliance with this Order to Suspend Enforcement.
  - 5. The Monitor shall serve, without bond or other security, at the expense of Renown Health on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Renown Health, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

6. Renown Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
  7. Renown Health shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Renown Health with respect to the performance of Renown Health's obligations under this Order to Suspend Enforcement.
  8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, until the termination of this Order to Suspend Enforcement, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Renown Health of its obligations under this Order to Suspend Enforcement.
  9. Renown Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- F. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- G. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph III.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Suspend Enforcement.
- I. The Monitor appointed pursuant to Paragraph III of this Order to Suspend Enforcement may be the same Person appointed as Monitor under the Decision and Order.

**IV.**

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order to Suspend Enforcement becomes final, and every sixty (60) days thereafter until this Order to Suspend Enforcement terminates, Renown Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Suspend Enforcement

**V.**

**IT IS FURTHER ORDERED** that Renown Health shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Renown Health,
- B. Any proposed acquisition, merger or consolidation of Renown Health, or
- C. Any other change in Renown Health, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order to Suspend Enforcement.

**VI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order to Suspend Enforcement, and subject to any legally recognized privilege, and upon written request with reasonable notice to Renown Health, Renown Health shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Renown Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Renown Health related to compliance with this Order to Suspend Enforcement, which copying services shall be provided by Renown Health at the request of the authorized representative(s) of the Commission and at the expense of Renown Health; and
- B. Upon five (5) days' notice to Renown Health and without restraint or interference from Renown Health, to interview officers, directors, or employees of Renown Health, who may have counsel present, regarding such matters.

**VII.**

**IT IS FURTHER ORDERED** that this Order to Suspend Enforcement shall terminate on the Termination Date.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED: August 3, 2012