

**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

DECISION AND ORDER

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 thereupon issued its Complaint and its Order to Suspend Enforcement of Renown Non-Compete (“Order to Suspend Enforcement”), 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, and having duly considered the comments filed thereafter by interested persons

pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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, as used in this Order, the following definitions shall apply:

- A. “Renown Health” means Renown Health, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Renown Health, including but not limited to Nevada Heart Institute, Inc., and NHI-1, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acceptable Termination” means any termination of employment with Renown Health resulting from (1) a Termination Notification which, upon consultation between the Monitor and the Commission’s staff, is submitted, after the Order becomes final, to Renown Health by the Monitor, or (2) Renown Health notifying the Monitor that a Cardiologist Employee is otherwise leaving employment with Renown Health with the intention of Participating in a Reno Cardiology Practice for a period of at least one year and the Monitor consulting with the Commission’s staff regarding such notice.
- D. “Cardiologist Employee” means a Physician who provides Cardiology Services in the Reno/Sparks Geographic Area as an employee of Renown Health and who, prior to providing Contract Services for Renown Health, offered Cardiology Services as a Participant in SNCA or as a Participant in Reno Heart.
- E. “Cardiology Services” means medical professional services in general cardiology (*e.g.*, medical management of heart and vascular conditions), invasive cardiology (*e.g.*, cardiac catheterizations), interventional cardiology (*e.g.*, angioplasty, placement of stents), and electrophysiology (*e.g.*, placement of pacemakers and defibrillators); *provided, however*, Cardiology Services does not include services provided to pediatric patients or services provided by cardiac surgeons.

- F. “Contract Services” means any service performed pursuant to any Employment Agreement between Renown Health and a Cardiologist Employee.
- G. “Employment Agreement” means, as applicable to the Cardiologist Employee, either an employment agreement between Renown Health and a Participant in SNCA entered into on or around November 24, 2010, or an employment agreement between Renown Health and a Participant in Reno Heart entered into on or around March 17, 2011.
- H. “Monitor” means the Person appointed to act as monitor by the Commission pursuant to Paragraph VII of this Order.
- I. “Participate” in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including but not limited to, “participating,” “participated,” “participation,” and “participant.”
- J. “Payer” means any Person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of physicians.
- K. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- L. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- M. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to. This definition applies to all tenses and forms of the word “relate to,” including but not limited to, “relates to,” and “related to.”
- N. “Release Period” means the period of time beginning on the date this Order becomes final and ending thirty (30) days from the date this Order becomes final.
- O. “Reno Cardiology Practice” means Cardiology Services offered in the Reno/Sparks Geographic Area by a cardiologist Participating in a medical practice or in an employment arrangement, excluding that of a Cardiologist Employee.
- P. “Reno Heart Physicians” or “Reno Heart” means the professional corporation formerly known as Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd. doing business as Reno Heart Physicians.

- Q. “Reno/Sparks Geographic Area” means the Reno/Sparks Metropolitan Statistical Area, as defined by the United States Office of Management and Budget, consisting of Washoe and Storey Counties.
- R. “Renown Non-Compete Provisions” means, (1) with respect to the Share Purchase Agreement (i) Sections 10.5 as it relates to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; and (ii) Section 10.7(a) as it relates to interfering with relationships between Renown and patients treated by a Cardiologist Employee; (iii) Sections 10.6, 10.7(b)-(d), 10.8, 10.9, 10.12, 10.15, and Exhibit A (Additional Breach Damages - Article 10) as such action under (i), (ii) or (iii) relates to a Cardiologist Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination; and (2) with respect to any Employment Agreement between Renown Health and any Cardiologist Employee, (i) Sections 7.5 and 11 as they relate to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; (ii) Section 7.7(a) as it relates to interfering with relationships between Renown and patients treated by a Cardiologist Employee; (iii) Sections 7.6, 7.7(b)-(d), 7.8, 7.9, 7.12, 7.15, 10.4, and Exhibit C as such action under (i), (ii) or (iii) relates to a Cardiologist Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination.
- S. “Separation Agreement” and “Separation Agreements” mean any agreement Related To terms by which a Cardiologist Employee terminates his or her Contract Services. *Provided, however*, a Separation Agreement shall not include (1) any agreement between Renown Health and such Cardiologist Employee to Participate in a Reno Cardiology Practice for a period of at least a year; or (2) any agreement by Renown Health to provide support to such Cardiologist Employee to Participate Reno Cardiology Practice.
- T. “Share Purchase Agreements” means any share purchase agreements entered into between Renown Health and SNCA, or any of SNCA’s members, in or around December 2010, and any share purchase agreement entered into between Renown Health and Reno Heart Physicians, or any of its members, in or around March 2011.
- U. “Suspension Period” means the period from the date the Order to Suspend Enforcement becomes final until the Termination Date.
- V. “SNCA” means Sierra Nevada Cardiology Associates, the professional corporation formerly known as Arger, DiPaolo, Drummer, Fuller, Newmark & Spring doing business as Sierra Nevada Cardiology Associates.
- W. “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 Decision and Order will not be issued in this matter.
- X. “Termination Notification” means (1) written notification submitted to the Monitor by a Cardiologist Employee of that employee’s intention to terminate his or her Employee

Agreement and intention to Participate in a Reno Cardiology Practice for a period of at least one year after such termination, or (2) independent determination by the Monitor that a Cardiologist Employee intends to Participate in a Reno Cardiology Practice for a period of at least one year after such termination.

II.

IT IS FURTHER ORDERED that Renown Health shall:

- A. Not enforce any of the Renown Non-Compete Provisions against any Cardiologist Employee for any activity that Cardiologist Employee engaged in during the Suspension Period through the Release Period that Relates To providing Termination Notification; *provided, however*, that this Paragraph II.A does not prohibit Renown Health from enforcing any of the Renown Non-Compete Provisions against any Cardiologist Employee who terminates Contract Services prior to the Release Period;
- B. Within two (2) days from the date the Order 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 each Termination Notification that is (1) submitted during the Release Period and (2) received by Renown Health as an Acceptable Termination, terminate Contract Services of the Cardiologist Employee who submitted that Termination Notification, and allow that Cardiologist Employee to leave Renown Health's employment on or before sixty (60) days of Renown Health's receipt of such notification from the Monitor;
- D. For any activity Related To this Paragraph II, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- E. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from terminating Contract Services pursuant to this Paragraph II.

PROVIDED, HOWEVER, upon receipt by the Commission of Renown Health's Paragraph VIII.A verified report of Acceptable Termination by ten (10) Cardiologist Employees, the Release Period shall end. *Provided further* that, if during the Release Period there are more than ten (10) Acceptable Terminations, the Monitor, after consultation with the Commission's staff, shall forward to Renown Health the first ten (10) such notifications received by the Monitor and shall not reveal the identity of any of the additional Cardiologist Employees who submitted Termination Notifications.

III.

IT IS FURTHER ORDERED that, if after the expiration of the Release Period, Renown Health has not received Acceptable Termination for at least six (6) Cardiologist Employees, then until receipt by the Commission of Renown Health's Paragraph VIII.A verified report of Acceptable Termination by six (6) Cardiologist Employees, Renown Health shall:

- A. Not enforce, directly or indirectly, the Renown Non-Compete Provisions against any Cardiologist Employee seeking to provide Termination Notification;
- B. Upon Acceptable Termination of any Cardiologist Employee, terminate Contract Services of each such Cardiologist Employee and allow that cardiologist to leave Renown Health's employment on or before ninety (90) days from the date such notification was received;
- C. For any activity Related To this Paragraph III, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- D. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from terminating Contract Services pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that:

- A. With respect to each Cardiologist Employee who terminates his or her Contract Services pursuant to Paragraph II or III of this Order, Renown Health shall not:
 - 1. Offer any incentive to such Cardiologist Employee to decline to provide Cardiology Services in a Reno Cardiology Practice;
 - 2. Enforce any provision of such Cardiologist Employee's Employment Agreement that would prevent that cardiologist from informing patients treated by that cardiologist of his or her new Reno Cardiology Practice and providing Cardiology Services to those patients;
 - 3. Enforce any of the Renown Non-Compete Provisions for any activity Relating To terminating Contract Services;
 - 4. Require any Cardiologist Employee, prior to terminating his or her Contract Services to enter into a Separation Agreement, including but not limited to any agreement to provide any payment to Renown Health;

5. Prevent, impede, or otherwise interfere with the provision of Cardiology Services by such Cardiologist Employee; *provided however*, that nothing in this Paragraph IV.A.5 shall require Renown Health to include any cardiologist in Renown Health's emergency room call panel, in the provider network of any health plan, network, or provider organization or to compensate any cardiologist for providing professional services to Renown Health or to its patients or its contractors beyond any requirement contained in Paragraph V of this Order;
 6. For a period of three (3) years from the date this Order becomes final deny, terminate or suspend medical staff privileges, or reduce or change medical staff membership status, of such Cardiologist Employee based solely on the status of that cardiologist's employment or lack of employment by Renown Health. *Provided, however*, that Renown Health may deny, terminate or suspend a cardiologist's medical staff privileges, or reduce or change medical staff membership status, due to (a) quality or patient safety determinations; or (b) violations by the cardiologist of facility rules and regulations or standards of conduct that apply to all medical staff members; and
 7. For a period of two (2) years from the date such Cardiologist Employee terminates his or her Contract Services, directly or indirectly, solicit, induce, or attempt to solicit or induce the employment of such Cardiologist Employee. *Provided, however*, that Renown Health may make general advertisements for cardiologists including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the cardiologist who so terminated his or her employment or who was released from the Renown Non-Compete Provisions. *Provided further* that Renown Health may employ any cardiologist who applies to Participate with Renown Health, as long as such cardiologist was not solicited by Renown Health in violation of this Paragraph.
- B. The purpose of Paragraphs II, III, and IV of this Order is to ensure that those Cardiologist Employees who 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.

V.

IT IS FURTHER ORDERED that, for a period of one (1) year from the date any Cardiologist Employee terminates Contract Services pursuant to Paragraphs II or III of this Order, if that cardiologist's Employment Agreement with Renown Health contained any provisions for support in the event that termination of employment was required by a determination, order, or agreement with a governmental agency, Renown Health shall provide such support in accordance with the terms of the cardiologist's Employment Agreement if requested by the Cardiologist Employee; *provided, however*, that Renown Health shall not, whether or not it is so provided in the Employment Agreement, negotiate with any Payer on behalf of that cardiologist.

VI.

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order becomes final, Renown Health shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. Acquire any assets of or financial interest in any group that provides Cardiology Services in the Reno/Sparks Geographic Area; or
- B. Enter into any Contract Services with any group that provides Cardiology Services in the Reno/Sparks Geographic Area.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as “the Notification”).

PROVIDED, HOWEVER, that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Renown Health and not from any other party to the transaction. Renown Health shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Renown Health shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED FURTHER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VII.

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 this Order 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. 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, 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 and in consultation with the Commission, including, but not limited to:
 - a. receiving Termination Notifications from Cardiologist Employees;
 - b. notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;
 - c. forwarding such Acceptable Terminations to Renown Health pursuant to this Order; and

- d. 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 Paragraphs II, III, IV.A.1-4, and V of this Order.
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. 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.
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, and any reports submitted by a current or former Cardiologist Employee with respect to the performance of Renown Health's obligations under this Order.
8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, until the later of: (i) one (1) year; or (ii) no fewer than six (6) Cardiologist Employees have terminated their Employment Agreements to provide Cardiology Services in the Reno/Sparks Geographic Area, 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.

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.
- E. 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.
- F. 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 VII.
- G. 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.
- H. The Monitor appointed pursuant to this Order may be the same Person appointed as Monitor under the Order to Suspend Enforcement.

VIII.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Renown Health has fully complied, as relevant, with Paragraphs II, and III of this Order, 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 all the terms of this Order. Renown Health shall submit at the same time a copy of these reports to the Monitor.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4) years, Renown Health shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order.

IX.

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 the 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.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, 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, 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.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on November 30, 2022.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 30, 2012