

## Complaint

## IN THE MATTER OF

**RENOWN HEALTH**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT*Docket No. C-4366; File No. 111 0101**Complaint, August 3, 2012 – Decision, November 30, 2012*

This consent order addresses the acquisition by Renown Health of Sierra Nevada Cardiology Associates and Reno Heart Physicians. The complaint alleges that Renown Health violated Section 7 of the Clayton Act by substantially lessening competition in the market for cardiology services in and around Reno, Nevada. The consent order requires Renown Health to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area.

*Participants*

For the *Commission*: Thomas Dahdouh, John Wiegand, and Erika Wodinsky.

For the *Respondent*: William Berlin, Ober Kaler; Kelly Testolin, in-house counsel.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Renown Health, directly or by or through its wholly-owned subsidiaries Nevada Heart Institute and NHI-1, Inc. (collectively “Renown Health”) has acquired the medical practices and assets of Sierra Nevada Cardiology Associates, Inc. (“SNCA”), and Reno Heart Physicians, Inc. (“RHP”), and has employed the physician members and physician employees previously providing cardiology services in connection with those entities, and has violated and is violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would

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be in the public interest, hereby issues its Complaint, stating its charges as follows.

**NATURE OF THE CASE**

1. Renown Health's acquisition of two cardiology groups in Reno, Nevada, SNCA and RHP, and the employment of the doctors who had formerly practiced in association with these medical group entities, is likely to lead to anticompetitive effects including increased prices and reduced non-price competition. This consolidation resulted in 15 of the cardiologists who had been associated with SNCA and 17 of the physicians who had been associated with RHP becoming employees of Renown Health.

2. Prior to the transactions at issue, SNCA and RHP, the two largest groups of physicians providing adult cardiology services in the Reno/Sparks, Nevada Metropolitan Statistical Area ("Reno area"), competed head-to-head to serve cardiology patients.

3. As a result of Renown Health's acquisition of SNCA in 2010 and the employment of the SNCA-affiliated cardiologists, Renown Health employed approximately 47% of the cardiologists serving private patients in the Reno area. As a result of Renown Health's subsequent acquisition of RHP in 2011 and employment of the RHP-affiliated cardiologists, Renown Health then employed approximately 97% of the cardiologists serving private patients in the Reno area. Renown Health's acquisition of RHP makes it likely that Renown Health will be able to exercise unilateral market power in the Reno area, which will result in higher prices and a reduction in non-price competition for the provision of cardiology services.

4. Although health plans are the direct customers for cardiology services provided to many patients, higher prices for those services are passed on to employers, unions, and other group purchasers of health insurance plans, and such costs are ultimately borne by patients in the Reno area through higher premiums, co-payments, and other out-of-pocket expenditures.

5. The price and non-price competition eliminated by Renown Health's acquisition of RHP and employment of its

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cardiologists will not be replaced by other providers. Prior to the acquisition, RHP was the only group of cardiologists that competed meaningfully with Renown Health for Reno-area cardiology patients.

### **RESPONDENT**

6. Respondent Renown Health is a non-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. In Reno, Renown Health owns and operates Renown Regional Medical Center, with 808 licensed beds, and Renown South Meadows Medical Center, with 76 licensed beds. Renown Health also operates Carson Valley Medical Center in Gardnerville, Nevada, as part of a joint venture with Barton Healthcare Service. In addition, Renown Health owns and operates Hometown Health Plan, a commercial health insurance company that does business in northern Nevada as well as other portions of the state.

7. Respondent Renown Health is, and at all times herein has been engaged in commerce or in activities in or affecting commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12. The acquisitions of SNCA and RHP constitute acquisitions under Section 7 of the Clayton Act, 15 U.S.C. § 18.

### **THE TRANSACTIONS**

8. On or about November 24, 2010, Arger, DiPaolo, Drummer, Fuller, Newmark & Spring, a Nevada professional corporation doing business as SNCA was converted to a Nevada for-profit corporation. SNCA, was then merged into Renown Health. In addition, Renown Health purchased certain of SNCA's assets, including its interest in a free-standing cardiac catheterization laboratory and its goodwill, for approximately \$3.4 million. This merger of SNCA into Renown Health ("SNCA merger") became effective on January 1, 2011.

9. On or about November 24, 2010, 15 physicians associated with SNCA signed employment agreements with Renown Health, providing that each such physician would become employed by Renown Health for a specified numbers of years, for a salary and

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certain specified benefits. The effective date of the employment agreements between Renown Health and each of the SNCA physicians was January 1, 2011.

10. The employment agreements between the former SNCA doctors and Renown Health contain “covenants,” including a covenant not to compete, a covenant of non-solicitation, and a covenant of non-interference. The covenant not to compete contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred for two years from negotiating or entering into an agreement to provide cardiology services at any hospital, medical practice or medical facility at a location within 50 miles of the physician’s principal place of practice with Renown Health, or from owning, operating, managing, becoming an employee, or in any way becoming connected with any hospital, medical practice or medical facility at a location within 50 miles of the physician’s principal place of practice with Renown Health. The covenant of non-solicitation contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred for a period of two years after leaving from soliciting or contacting former patients. The covenant of non-interference contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred from causing any entity with a contractual relationship with Renown Health from terminating such relationship with Renown Health.

11. On or about March 17, 2011, Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd., a professional corporation doing business as Reno Heart Physicians was converted to a Nevada for-profit corporation. This corporation was then merged into Renown Health. In addition, Renown Health purchased certain of RHP’s assets, for approximately \$4 million. This merger of RHP into Renown

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Health (“RHP merger”) became effective on or about March 29, 2011.

12. On or about March 17, 2011, 17 physicians associated with RHP signed employment agreements with Renown Health, providing that each such physician would become employed by NHI for specified numbers of years, for a salary and certain specified benefits. The effective date of the employment agreements between Renown Health and each of the RHP physicians was March 29, 2011. Of the 17 cardiologists affiliated with RHP who became Renown Health employees, 16 practiced primarily and regularly in the Reno area; one cardiologist practiced regularly in an office located in Carson City, Nevada. The employment agreements between the former RHP doctors and Renown Health also contain “covenants” including a covenant not to compete, a covenant of non-solicitation, and a covenant of non-interference, which are identical or virtually identical to those contained in the employment agreements between the SNCA doctors and Renown Health.

13. Prior to the SNCA merger, Renown Health did not employ any cardiologists. With the SNCA merger and employment of the former SNCA cardiologists, Renown Health employed 15 cardiologists who competed with RHP in the provision of cardiology services in the Reno area. After the RHP merger, Renown Health, either directly or through its subsidiaries, employed 31 cardiologists in Reno and one cardiologist in Carson City.

14. The effect of the acquisition of RHP by Renown Health was to combine 31 of the 32 cardiologists then practicing in the Reno area under Renown Health, the owner and operator of the largest hospital system in that area.

### **THE RELEVANT MARKET**

15. For the purposes of this Complaint, the relevant line of commerce is the provision of adult cardiology services. “Cardiology services” includes diagnostic or treatment services by cardiologists who provide non-invasive services (general cardiology), invasive services (including diagnostic cardiac catheterization procedures), interventional cardiology (including

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placement of stents), and electrophysiology services (including the insertion and/or removal of devices related to heart rhythm functions). For purposes of this complaint, cardiology services does not include pediatric cardiology services or cardiac surgery.

16. The relevant geographic market in which to assess the effect of the SNCA and RHP mergers with Renown Health is the Reno area, including Washoe County, Nevada, but not including Carson City, Nevada.

**THE STRUCTURE OF THE MARKET**

17. The merger of RHP into Renown Health and the employment of the RHP physicians by Renown Health reduced from two to one the number of adult cardiology service providers that offer a broad range of adult cardiology subspecialties in the Reno area. These cardiology subspecialties, including non-invasive, invasive, interventional, and electrophysiology, are required to fully meet the needs of patients with heart conditions. At the time of the RHP transaction, the only other cardiologist serving adult cardiology patients in the Reno area was a sole practitioner, who could not provide a comparable range of services.

18. At the time of the consummation of the transaction at issue here, Renown Health employed 97% of the cardiologists in the relevant market. The Herfindahl-Hirschman Index (“HHI”) in the market for the provision of cardiology services, based on the number of cardiologists serving the market, increased from 4707 to 9395, an increase of 4688 points.

19. Since the time the former RHP doctors became employees of Renown Health, two Renown Health cardiologists have left the Reno area. In addition, three cardiologists who are not affiliated with Renown Health have started practicing cardiology in the Reno area. As a result, Renown Health now employs approximately 88% of the cardiologists in the area. The current HHI, based on the number of cardiologists serving the market is now 7815, an increase of 3108 points over the HHI prior to the Renown Health’s acquisition of RHP.

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20. Prior to January 1, 2011, the effective date of the SNCA physicians' employment by Renown Health, SNCA and RHP were actual and substantial competitors in the relevant market. After Renown Health's employment of the SNCA physicians, Renown Health became an actual and substantial competitor of RHP in the provision of cardiology services to patients in the Reno area.

21. Prior to March 29, 2011, the effective date of the RHP physicians' employment by Renown Health, health plans and self-insured employers, seeking to contract with cardiologists for the provision of cardiology services to their members and/or employees, would have been able to choose between RHP and Renown Health based on price and non-price terms offered by the respective groups of cardiologists. Health plans and employers contracting for adult cardiology services benefitted from this head-to-head competition with lower prices and improved quality and service.

22. The availability and number of alternative providers is the primary source of a health plan's bargaining power to negotiate competitive rates on behalf of its members. Thus, an acquisition that reduces a health plan's choice of providers reduces the health plan's bargaining power when negotiating with providers, and can lead to higher prices and reduced quality. Renown Health's acquisition of RHP reduced the number of cardiology practices capable of providing a full range of cardiology services from two to one, creating a significant risk of higher prices and reduced quality.

### **ENTRY CONDITIONS**

23. The most significant barrier to entry into the market for adult cardiology services in the Reno area is the need for new entrants to recruit a sufficient number of cardiologists with appropriate training, experience and areas of specialization. Because cardiologists within a practice must provide coverage for each other, unless an entity can recruit a sufficient number of cardiologists in each necessary subspecialty, any cardiologists recruited to the market will not have a sufficient number of other cardiologists with whom they can share responsibilities.

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24. New entry into the relevant geographic market sufficient to deter or counteract the anticompetitive effects described in Paragraphs 25 and 26 is unlikely to occur in a timely manner because recruitment of a sufficient number of cardiologists to provide a competitive constraint to Renown Health would take more than two years.

**EFFECTS OF THE TRANSACTION**

25. The effects of Renown Health's acquisition of RHP and employment of the RHP physicians may be substantially to lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

- a. eliminating actual, direct and substantial competition between Renown Health and RHP in the market for the provision of cardiology services;
- b. increasing the ability of the merged entity unilaterally to raise prices for cardiology services; and
- c. reducing incentives to improve service or product quality in the relevant markets

26. After the consummation of the transaction with its combination of the two largest cardiology physician groups in the Reno area, health plans can no longer threaten, implicitly or explicitly, to exclude Renown Health or the cardiologists employed by Renown Health. This substantially reduces the health plans' bargaining power, and substantially increases Renown Health's bargaining power, when negotiating rates for adult cardiology services in the Reno area.

**VIOLATIONS CHARGED**

27. The transaction described in Paragraph 11, and Renown Health's subsequent employment of RHP doctors, described in Paragraph 12, constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

## Decision and Order

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this third day of August, 2012, issues its Complaint against said Respondent.

By the Commission.

**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

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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

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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.

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- 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.

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- 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

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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.

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**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.

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*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

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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

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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

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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,

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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.

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- 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;

## Decision and Order

- 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.

## Decision and Order

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.

## Decision and Order

- 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

## Decision and Order

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.

## Decision and Order

**XI.**

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

By the Commission.

**Appendix A - Letter to Cardiologist Employees**

Dear Physician:

Renown Health (“Renown”) has entered into an agreement with the Federal Trade Commission to resolve allegations that its acquisitions of certain cardiology medical practices and employment of the associated physicians has or will restrict competition in violation of Section 7 of the Clayton Act. Although Renown has not admitted liability or admitted that the facts alleged in the Commission’s complaint (other than jurisdictional facts) are true, it has agreed to two FTC orders containing certain terms which the Commission believes will ameliorate the competitive effects of the acquisitions.

For your convenience, Renown’s obligations under the FTC’s Orders, including the terms under which you may terminate your employment, are summarized below. These obligations are described more fully in the FTC’s Orders and its Analysis to Aid Public Comment which are both attached to this letter. **Nothing in this summary is intended to modify any of the terms of the Commission’s Orders or to provide legal advice.**

Description of the Orders: The first order (“Order to Suspend Enforcement of Renown Non-Compete” or “Order to Suspend”) establishes a period of time during which you, as a cardiologist currently employed by Renown, may explore all employment and professional opportunities in the Reno/Sparks area, whether as an employee, a member of a medical group, or in private practice. Renown cannot enforce any non-compete or non-solicitation

## Decision and Order

provisions in your employment contract to interfere with your discussions during this time period. If you actually terminate your employment with Renown during this period, however, the Order to Suspend does not prohibit Renown from pursuing its contract rights.

The second order (“Decision and Order”), if accepted by the Commission after a period allowing for public comment, will allow you to terminate your employment with Renown without penalty so long as the following conditions are met:

- (1) You must submit written notice of your intention to terminate your employment with Renown to the special monitor who has been appointed for the purpose of assuring confidentiality. Contact information for the monitor is provided at the conclusion of this letter;
- (2) You must intend to continue to practice in the Reno/Sparks area for at least one year;
- (3) You must be among the first 10 physicians to submit your notice to terminate employment. Renown is not required to terminate more than 10 employment contracts. To protect the confidentiality of the doctors who want to leave, the monitor will submit to Renown no more than the first 10 notices he receives; and
- (4) You must leave employment with Renown within 60 days of Renown receiving your notice from the monitor, but you may not leave prior to the monitor delivering your notice to Renown.

Timing of the Orders: The Order to Suspend begins on August 6, 2012, and continues for at least 30 days while the Commission receives public comment on the Decision and Order and considers those comments. You may enter into discussions and negotiations for new employment during this period. If you decide during this period to terminate your employment, you may notify the special monitor so that your name will be included in the event that the Decision and Order is accepted as final. Because the Order to Suspend will continue in effect until the Commission votes to accept (or reject) the Decision and Order, the conclusion of this

## Decision and Order

time period cannot be determined at this time. It will, however, not end before September 5, 2012.

If the Commission accepts and issues the Decision and Order as final, a second 30-day period (Release Period) will begin. During this period, you may begin or continue discussions and negotiations for new employment. If you decide to terminate your employment, you should notify the monitor of your intention. The monitor will forward to Renown the names of the first ten physicians who have provided notice of their desire to terminate their employment. Renown is not required to allow more than 10 physicians who have given notice to the monitor and satisfied all of the conditions described above to terminate their employment without any penalty. On the other hand, if at the end of this 30-day Release Period fewer than six doctors have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other employment opportunities and leave Renown's employment without penalty will remain open. This period will continue to remain open until six (rather than 10) cardiologists have terminated their employment with Renown.

**PLEASE NOTE:**

- The Orders do not **require** any doctor to terminate employment with Renown or to work for any other entity.
- The Orders do not **require** Renown to fire any doctors. However, the Orders also do not prohibit Renown from negotiating with a doctor regarding a mutual agreement for that physician's employment to be terminated.
- The Orders prohibit Renown from enforcing any non-compete or non-solicitation provisions in any contract, pursuing any breach of contract action, or taking any retaliatory action against any physician who either terminated his or her employment under the terms of the Orders or who sought new employment as allowed by the Orders but decided not to leave.
- If you terminate your employment at times or under terms not described in the Decision and Order, the Decision and

## Decision and Order

Order does not prohibit Renown from pursuing its contract rights.

- Renown may be required to provide you with transitional assistance if you terminate employment to practice as an independent physician (rather than as an employee of another entity) in the Reno/Sparks area. Please review the proposed Decision and Order and your employment agreement with Renown (or contact the monitor) to determine whether these transitional services are available to you.
- If six or more physicians have terminated their employment with Renown by the end of the Release Period, Renown may pursue its legal remedies against any employee who *subsequently* terminates employment with Renown in violation of that employee's contract.

If you have questions about the information contained in this letter or in the Analysis to Aid Public Comment, including questions regarding timing or implementation of the Orders, please contact the monitor, Judge Charles McGee at (775) 823-9975, or FTC's Bureau of Competition's Compliance Division at (202) 326-2031.

Written notifications of intent to terminate employment should be provided to:

Judge Charles McGee  
1575 Delucchi Lane, Suite115-1  
Reno, NV 89502  
Facsimile: (775) 823-9973  
Email: judgemcgee@msn.com

## Decision and Order

**Appendix B – Monitor Agreement  
[Redacted Public Version]**

## MONITOR AGREEMENT

This Monitor Agreement ("Monitor Agreement") entered into this 18<sup>th</sup> day of July, 2012 by Renown Health and Judge Charles McGee provides as follows:

WHEREAS, the United States Federal Trade Commission (the "Commission"), *In the Matter of Renown Health*, has accepted for public comment an Agreement Containing Consent Order ("Consent Agreement"), incorporating an Order to Suspend Enforcement of Renown Non-Compete ("Order to Suspend Enforcement") and a Decision and Order ("Decision and Order"), collectively referred to as the "Commission Orders," with Renown Health, and the State of Nevada, through its Attorney General ("Nevada Attorney General"), has filed in the United States District Court for the District of Nevada, a Final Judgment ("Nevada Order") with Renown Health (collectively, the Commission Orders and the Nevada Order are referred to as the "Orders"). The Orders, among other things, require Renown Health to waive enforcement of certain contractual terms with its Cardiologist Employees so that a certain number of those employees can leave Renown Health's employment to practice cardiology in the Reno area, and provides for the appointment of one or more Monitors to ensure that Renown Health complies with its obligations under the Orders;

WHEREAS, the staff of the Commission and the Nevada Attorney General have appointed Charles McGee as such monitor (the "Monitor") pursuant to the Orders to monitor Renown Health's compliance with the terms of the Consent Agreement and Orders, and Charles McGee has consented to such appointment;

WHEREAS, the staff of the Commission and the Nevada Attorney General on July 17, 2012 notified Renown Health of the selection of Judge Charles McGee as the Monitor, and Renown Health on July 18, 2012 agreed to the selection of Judge Charles McGee, and is executing this agreement that, subject to the prior approval of the Commission and the Nevada Attorney General, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Renown Health's compliance with the relevant requirements of the Orders in a manner consistent with the purpose of the Orders;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Renown Health is not effective for any purpose, including but not limited to imposing rights and responsibilities on Renown Health or the Monitor under the Orders, until it has been approved by the Commission and the Nevada Attorney General; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Orders.
2. The Monitor shall have all of the powers and responsibilities conferred upon the Monitor by the Orders.

## Decision and Order

3. Renown Health hereby agrees that it will fully comply with all terms of the Orders requiring it to confer all rights, powers, authority and privileges upon the Monitor, or to impose upon itself any duties or obligations with respect to the Monitor, to enable the Monitor to perform the duties and responsibilities of the Monitor thereunder.
4. The Monitor shall have the power and authority to monitor Renown Health's compliance with the terms of the Orders, and shall carry out the duties of the Monitor in consultation with the Commission and the Nevada Attorney General, including but limited to:
  - a. receiving Termination Notifications from Cardiologist Employees;
  - b. receiving from Renown Health notification that it has terminated the employment of a Cardiologist Employee;
  - c. notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;
  - d. forwarding all Acceptable Terminations to Renown Health pursuant to the Order; and
  - e. assuring Renown Health's expeditious compliance with all of its obligations and performance of all of its responsibilities as required by the Orders.
5. Renown Health further agrees that:
  - a. it will provide the Monitor with copies of all reports submitted to the Commission and the Nevada Attorney General pursuant to the Orders, simultaneous with the submission of such reports to the Commission and the Nevada Attorney General, for the duration of the Monitor's term under this Agreement;
  - b. it will, subject to any demonstrated legally recognized privilege, grant the Monitor full and complete access to Renown Health's personnel, books, documents, records kept in the normal 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 their obligations under the Orders; and
  - c. it will 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 the Orders.
6. Renown Health shall promptly notify the Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between Renown Health, the Commission, and the Nevada Attorney General related to the Orders, together with copies of such communications.

## Decision and Order

7. 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 and the Nevada Attorney General 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.
8. Renown Health shall pay the Monitor, in accordance with the fee schedule attached hereto as Confidential Appendix A, for all reasonable time spent in the performance of the Monitor's duties and responsibilities, including all monitoring activities, all work in connection with the negotiation and preparation of this Monitor Agreement, all work in the nature of final reporting and file closure, and all reasonable and necessary travel time.
  - a. In addition, Renown Health will pay (i) all out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties and responsibilities, including any international telephone calls and any auto, train or air travel in the performance of the Monitor's duties, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
  - b. The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
9. The Monitor shall maintain the confidentiality of all information provided to the Monitor by Renown Health. Such information shall be used by the Monitor only in connection with the performance of the Monitor's duties pursuant to this Monitor Agreement. Such information shall not be disclosed by the Monitor to any third party other than:
  - a. persons employed by, or working with, the Monitor under this Monitor Agreement, in which case such persons shall be informed of, and agree in writing to abide by, the confidentiality obligations applicable to the Monitor, in accordance with Paragraph 12 below, or
  - b. persons employed at or retained by the Commission or the Nevada Attorney General who are working on this matter.
10. The Monitor shall maintain a record and inform the Commission and the Nevada Attorney General of all persons (other than representatives of the Commission and the Nevada Attorney General) to whom confidential information related to this Monitor Agreement has been disclosed.

## Decision and Order

11. The Monitor shall act in a fiduciary capacity for the benefit of the Commission and the Nevada Attorney General.
12. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall promptly return to Renown Health all material provided to the Monitor by Renown Health and shall destroy any material prepared by the Monitor that contains or reflects any confidential information of Renown Health. Nothing herein shall abrogate the Monitor's duty of confidentiality.
13. To the extent that the Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Monitor in accordance with the Orders, the Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Monitor and Renown Health.
14. Nothing in this Monitor Agreement shall require Renown Health to disclose any material or information that is subject to a legally recognized privilege or that Renown Health is prohibited from disclosing by reason of law or an agreement with a third party.
15. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Orders as they relate to Renown Health.
16. Renown Health hereby confirms its obligation to indemnify the Monitor and hold the Monitor harmless in accordance with and to the extent required by the Orders. 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 gross negligence, willful or wanton acts, or bad faith by the Monitor.
17. In the event of a disagreement or dispute between Renown Health and the Monitor concerning Renown Health's obligations under the Orders, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division or the staff of the Nevada Attorney General to resolve this issue.
18. This Monitor Agreement shall be subject to the substantive law of the State of Nevada (regardless of the choice of law principles of Nevada or those of any other jurisdiction).
19. This Monitor Agreement shall terminate when the last obligation under Paragraphs II, III, IV.A.1-4, and V of the Decision and Order and Paragraphs 33, 34, 35(a)-(d), and 36 of the Nevada Order have been fully performed; provided, however, that the Commission and the Nevada Attorney General may extend this Monitor Agreement as may be necessary or appropriate to accomplish the purposes of the Orders.

## Decision and Order

20. In the event that, during the term of this Monitor Agreement, the Monitor becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor of any of his duties under this Monitor Agreement, the Monitor shall promptly inform Renown Health, the Commission, and the Nevada Attorney General of such conflict or potential conflict.
21. In the performance of his functions and duties under this Monitor Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his or her own business affairs.
22. It is understood that the Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Monitor and Renown Health.
23. This Monitor Agreement is for the sole benefit of the parties hereto and their permitted assigns, the Commission, and the Nevada Attorney General, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.
24. This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or understandings, whether written or oral.
25. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgment of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Monitor, to:

Judge Charles McGee  
1575 Delucchi Lane, Suite 115-1  
Reno, NV 89502

Telephone: (775) 823-9975  
Facsimile: (775) 823-9973  
Email: [judgetcmcg@msn.com](mailto:judgetcmcg@msn.com)

If to Renown Health, to:

Renown Health  
Attention: Kelly Testolin, General Counsel  
1155 Mill Street, Z-7

## Decision and Order

Reno, NV 89502

Telephone: (775) 982-6054  
Facsimile: (775) 982-5754  
Email: [ktestolin@renown.com](mailto:ktestolin@renown.com)

## With copy to:

William Berlin  
Ober Kaler  
1401 H Street, N.W., Suite 500  
Washington, DC. 20005

Telephone: (202) 326-5011  
Facsimile: (202) 408-0640  
Email: [weberlin@ober.com](mailto:weberlin@ober.com)

## If to the Commission, to:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
Attention: Secretary  
Telephone: (202) 326-2514  
Facsimile: (202) 326-2496

## With copy to:

Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
Attention: Assistant Director for Compliance  
Telephone: (202) 326-2526  
Facsimile: (202) 326-3396

## If to the Nevada Attorney General, to:

State of Nevada Office of the Attorney General  
Bureau of Consumer Protection  
Attention: Antitrust Unit  
10791 W. Twain Avenue, Suite 100  
Las Vegas, NV 89135  
Telephone: (702) 486-3420  
Facsimile: (702) 486-3283

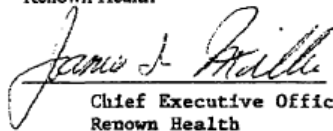
## Decision and Order

26. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Nevada Attorney General.

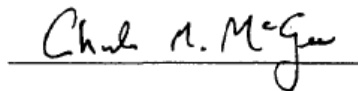
27. This Monitor Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

Renown Health

  
Chief Executive Officer  
Renown Health

MONITOR

  
\_\_\_\_\_

Analysis to Aid Public Comment

**Confidential Appendix B-1**

**[Redacted From the Public Version, But Incorporated By  
Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

**I. Overview**

The Federal Trade Commission has accepted an agreement containing two consent orders with Renown Health. The agreement settles charges that Renown Health violated Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the market for cardiology services in and around Reno, Nevada, through its acquisition of the two largest cardiology practices in the Reno area and its employment of the cardiologists whose practices it acquired.

The Decision and Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Decision and Order final. The Order to Suspend, which is final immediately, will remain in force either until the Decision and Order becomes final or the Commission decides not to issue an order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Orders. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Orders or to modify their terms in any way. Further, the proposed Consent Orders have been entered into for settlement purposes only and do not constitute an admission by Renown

## Analysis to Aid Public Comment

Health that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

**II. Background and Structure of the Market**

Renown Health is based in Reno, Nevada, and operates general acute care hospitals and commercial health plans which serve the Reno area. It is the largest provider of acute care hospital services in northern Nevada.

Prior to the transactions at issue, most of the cardiologists practicing in the Reno area were affiliated with two medical groups which did business under the names Sierra Nevada Cardiology Associates (“SNCA”) and Reno Heart Physicians (“RHP”). Cardiologists are generally internal medicine physicians who specialize in the practice of cardiology, including the provision of non-invasive services (general cardiology), invasive cardiology services (e.g., diagnostic cardiac catheterization), interventional cardiology services (e.g., catheterizations and the placement of stents), and electrophysiology services (e.g., services related to the diagnosis and treatment of heart rhythm conditions). The practices of the SNCA and RHP physicians did not generally include cardiac surgery or pediatric cardiology. Other than the physicians affiliated with SNCA and RHP, there are very few cardiologists practicing adult cardiology in the Reno, Nevada, area.

In late 2010, Renown Health reached agreements to acquire SNCA’s medical practice and to employ the 15 SNCA cardiologists who practiced in the Reno area. Prior to Renown Health’s acquisition of SNCA, it did not employ any cardiologists. With the employment of the SNCA cardiologists, Renown Health competed with RHP in the provision of cardiology services. In March 2011, Renown Health acquired RHP. As part of this acquisition, Renown Health employed the 16 RHP cardiologists who practiced in the Reno area.

Among other terms, the employment agreements between Renown Health and the cardiologists from both SNCA and RHP contain covenants that prohibit the cardiologists from entering into medical practice in competition with Renown Health (“non-compete provisions”). As a result of the acquisitions of the two

*Analysis to Aid Public Comment*

medical groups (and the employment of the physicians affiliated with those groups), Renown Health now employs approximately 88% of the physicians providing cardiology services for adults in the Reno area.

**III. The Complaint**

The complaint alleges that Renown Health's acquisitions of the two cardiology practices created a highly concentrated market for the provision of cardiology services in the Reno area. According to the complaint, the consolidation of the two competing groups into a single group of cardiologists employed by Renown Health has eliminated competition based on price, quality, and other terms of competition. The consolidation of the two groups into one increased the bargaining power of Renown Health and may lead to higher prices. The complaint further alleges that entry into the market at a scale large enough to form a competitive alternative for health plans is unlikely to be timely or sufficient to deter the likely price increases.

**IV. The Consent Orders**

The goal of the Consent Orders in this matter is to restore competition for cardiology services in the Reno area as quickly as possible. The Commission believes that competition is likely to be restored if Renown Health is required to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area. Renown Health has entered in an Agreement Containing Consent Orders, which includes the Order to Suspend Enforcement of Renown Non-Compete ("Order to Suspend") and the Decision and Order.

**A. Order to Suspend Enforcement of Renown Non-Compete**

The Order to Suspend establishes a period of time during which the former SNCA and RHP cardiologists currently employed by Renown Health in Reno may explore other employment and professional opportunities in the Reno area confidentially, whether as an employee, a member of a medical

## Analysis to Aid Public Comment

group, or in private practice. During this period, Renown Health is prohibited from interfering with the cardiologists' employment discussions and from enforcing the provisions in their employment contracts prohibiting such activities. The purpose of this Order to Suspend is to allow Renown Health's cardiologists to communicate with possible employers without the risk of violating the non-compete provisions in their current employment contracts. In order to facilitate this process, the Order to Suspend requires Renown Health to inform all of its cardiologists through an explanatory letter, as well as copies of the Orders and this Analysis to Aid Public Comment within two days of the Orders being placed on the public record.

The Order to Suspend is effective immediately, i.e., without a public comment period, upon the Agreement Containing Consent Orders being placed on the public record, and operates for at least 30 days while the Commission receives and considers public comment on the Decision and Order. Cardiologists may decide during this period to terminate employment, and may notify the special monitor (who has been appointed) to ensure their inclusion in the group of up to ten cardiologists who will be allowed to leave Renown Health in the event that the Commission issues the Decision and Order. However, nothing in the Order to Suspend requires Renown Health to release any physician from his or her employment agreement until the Decision and Order becomes final.

**B. Decision and Order**

If the Commission issues the final Decision and Order, a second 30-day period ("Release Period") will begin. During this period, cardiologist employees can terminate their employment with Renown without penalty so long as the following conditions are met:

- (1) The cardiologist must submit notice of an intention to terminate employment with Renown Health to the monitor who has been appointed for the purpose of assuring confidentiality;
- (2) The cardiologist must state his or her intention to continue to practice in the Reno area for at least one year;

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- (3) The cardiologist must be among the first 10 physicians to submit notice to terminate employment. Renown Health is not required to release more than 10 cardiologists from their employment contracts. To protect the confidentiality of the doctors who want to leave, the monitor will submit to Renown Health no more than the first 10 notices received; and
- (4) The cardiologist may not leave prior to the monitor delivering notice to Renown Health, but must leave employment with Renown Health within 60 days of Renown Health receiving notice from the monitor.

At any time during the Release Period, after the monitor has informed Renown that 10 physicians have met the requirements to terminate without penalty, Renown may request that the Release Period be terminated.

If at the end of this Release Period fewer than six doctors have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other employment opportunities and leave Renown's employment without penalty will remain open until six cardiologists have terminated their employment with Renown. This provision is included in the Decision and Order to ensure that *at least* six physicians can leave.

Paragraph II describes the basic terms under which cardiologists may terminate their employment with Renown Health. It prohibits Renown from (1) enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements, (2) pursuing any breach of contract action for violation of any of these provisions, or (3) taking any retaliatory action against any physician who either leaves under the terms of the Orders or who decides not to leave after exploring other employment as allowed by the Orders.<sup>1</sup> The Order does not,

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1 The Order does not require that any doctor terminate employment with Renown or work for any other entity. Similarly, it does not require Renown to fire any doctor. It also does not prohibit Renown from negotiating with a doctor to reach a mutual agreement for that physician's employment to be terminated.

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however, require Renown to allow cardiologists to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph III provides for the extension of the period for cardiologists to terminate their employment if at least six cardiologists do not terminate during the initial period.

Paragraph IV includes a number of provisions to ensure that Renown Health will not take any actions to discourage physicians from exploring opportunities to leave or from leaving its employment pursuant to the Decision and Order. In addition, Paragraph IV.A.6 prohibits Renown Health, for a period of three years, from denying, terminating or suspending the medical staff privileges of any physician who leaves Renown Health's employment pursuant to the Consent Orders.

Paragraph V preserves Renown Health's obligation to provide transition services to cardiologists whose employment contracts include such provisions, excluding transitional services relating to negotiating with health plans. Paragraph VI requires Renown Health to give advance notification for future acquisitions affecting this market. Paragraph VII specifies the rules governing the work of the special monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Order.

#### **V. Renown Health's Agreement with the Nevada Attorney General**

The State of Nevada, through its Attorney General, worked with the Commission staff in the investigation and resolution of this matter. The Nevada Attorney General filed her own complaint containing allegations similar to those in the Commission's complaint, and Renown Health has entered into a stipulated agreement with the Nevada Attorney General that contains obligations similar to those in the Commission's orders. This agreement is embodied in a document called a Final

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*Analysis to Aid Public Comment*

Judgment, and is subject to court approval. Copies of these documents can be obtained from the Nevada Attorney General's Office.

## Complaint

## IN THE MATTER OF

**CAREPATROL, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4379; File No. 112 3155**Complaint, December 3, 2012 – Decision, December 3, 2012*

This consent order addresses CarePatrol, Inc.'s statements made in Internet advertising regarding its placement services for seniors requiring long-term care in assisted living facilities and other non-nursing home facilities servicing the frail elderly. The complaint alleges that CarePatrol violated of Section 5(a) of the Federal Trade Commission Act by making the false and unsubstantiated claims: (a) that it monitors or grades the care history and violations of virtually all or a substantial majority of assisted living facilities in a consumer's desired location; (b) that its senior care consultants are located in every state; and (c) that its monitoring or grading of assisted living facilities is based on a review of the facilities' most recent state inspection reports. The consent order prohibits CarePatrol from making false or unsubstantiated representations regarding its placement services.

*Participants*

For the *Commission*: Zachary Hunter and David R. Spiegel.

For the *Respondent*: Chuck Bongiovanni, Chief Executive Officer, *pro se*.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that CarePatrol, Inc. ("CarePatrol" or "respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Arizona corporation with its principal office or place of business at 625 N. Gilbert Rd., Ste. 200, Gilbert, Arizona 85234. Respondent provides its services through 18 franchises located in 12 states.
2. Respondent advertises that its "senior care consultants" offer consumers free assistance in obtaining placements at