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13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14 IN AND FOR THE COUNTY OF WASHOE

15 RENOWN HEALTH, INC., a Nevada
16 corporation,

17 Plaintiff,

18 vs.

19 DAVID DEVALK, an individual,
20 Defendant.

Case No. CV12-02220

Dept. No. 6

21 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

22 This is an action for breach of a Confidentiality and Non-Competition Agreement dated as
23 of March 28, 2011 (the "Agreement") entered into between the plaintiff, Renown Health, Inc.
24 ("Renown"), and the defendant David DeValk (DeValk) and together (the "Parties"). The
25 Agreement provides terms and conditions relating to DeValk's employment, or self-employment
26 on termination of his employment with Renown. The Agreement also has provisions protecting
27 Renown's confidential information and its employees from solicitation from DeValk on
28 termination of his employment. When DeValk terminated his employment with Renown, and
accepted employment with Prime Healthcare Management, Inc. ("Prime"), which owns and
operates Saint Mary's Regional Medical Center in Reno, Nevada ("Saint Mary's"), Renown

1 claimed that DeValk breached several provisions of that Agreement, including disclosing
2 confidential information and documents, soliciting Renown employees, and competing against
3 Renown by accepting a job with a competitor.

4 Renown filed a motion for preliminary injunction (the "Motion") to enjoin and restrain
5 DeValk from disclosing confidential information, soliciting employees of Renown, and from
6 working for Prime in Reno, or anywhere else in Prime's network of hospitals, to the extent any of
7 that work affected or impacted competition with Renown in the geographic areas limited from
8 competition in the Agreement. The Motion came on for hearing on November 21, 2013,
9 November 22, 2013 and January 16, 2014, with Anthony Hall and Rico Cordova of Holland &
10 Hart, representing Renown, and William Peterson of Snell & Wilmer and Tom Burton of Burton,
11 Bartlett & Glogovac, representing DeValk.

12 Having considered the Motion, Opposition, Reply, and all other papers and pleadings on
13 file in this action, and all testimony, exhibits, and arguments of counsel, the Court makes the
14 following Findings of Fact and Conclusions of Law, and issues the following Order which both
15 grants and denies the Motion in part.

16 **Findings of Fact**

17 1. The Parties freely and voluntarily entered into the Agreement in March or April,
18 2011. Exhibit 3; TT 1/26/14 at 135.

19 2. The Agreement was entered into in the context of the acquisition by Renown, of
20 Reno Heart Physicians ("RHP"), a professional corporation exclusively engaged in the provision
21 of cardiology services located in Reno, Nevada, with operations in several rural communities in
22 Northern Nevada. TT 1/16/14 at 138.

23 3. DeValk, a non-physician, was the chief executive officer of RHP and the head of
24 all of its business operations. TT 1/16/14 at 133

25 4. DeValk was employed by RHP in this capacity during his entire employment with
26 RHP from approximately 2004 to the time of Renown's acquisition of RHP in 2011. *Id.*

27 5. Prior to his employment with RHP, and since 1981, DeValk worked in
28 administrative and business capacities with other employers in the health care field in Southern

1 California. *Id.*

2 6. During the entire time of his employment at Renown, until approximately the end
3 of June 2012, DeValk's employment at Renown was exclusively related to the business aspects of
4 providing cardiology services, and cardiology practice in and for Renown's Nevada Heart
5 Institute, which matched his prior experience in management of cardiology practices. 1/16/14 TT
6 at p. 139.

7 7. Sometime towards the end of June 2012 DeValk was transferred from the
8 cardiology area of practice at Renown to neuroscience. *Id.*

9 8. In August 2012, DeValk terminated his employment with Renown and became
10 employed by Prime, providing a variety of business services and advice to Saint Mary's,
11 including services relating to the provision of cardiology services by Saint Mary's. TT 140

12 9. DeValk continued to provide such service and advice to Saint Mary's until
13 approximately June 2013, when he ceased working in the cardiology practice area at Saint
14 Mary's. TT 160.

15 10. Since June 2013, DeValk has not been involved in any way in the creation of new
16 employment relationships with Saint Mary's cardiology development, cardiology practice,
17 supervision of cardiology employees, or management of cardiology practices for Saint Mary's.
18 TT 140.

19 11. The legitimate business interest of Renown in entering into the Agreement with
20 DeValk was to protect itself from DeValk competing with Renown in the things DeValk was
21 doing while employed by Renown, and specifically, DeValk's work in connection with
22 cardiology services. TT 139-140.

23 12. The Agreement is plain and unambiguous, and places geographic, time and scope
24 limitations and restrictions on DeValk's employment with Prime that are reasonable in
25 geographic reach and duration, but as to scope, exceed Renown's legitimate business interests in
26 connection with the Agreement, and also exceed the "reasonable scope" of restrictions and
27 limitations on DeValk's employment with Prime, or others, as defined in finding 10 above. TT
28 138-39.

1 13. DeValk did share one Renown confidential document with Saint Mary's relating to
2 salaries and compensation in the cardiology area, but has not shared any other Renown
3 confidential documents with Saint Mary's. TT 135.

4 14. DeValk did not solicit any employees of Renown. TT 136.

5 15. DeValk did participate directly in the solicitation of the Acadia Group (a family
6 practice) and has engaged in efforts to develop business relationships between primary care
7 groups and Saint Mary's, but these activities and similar efforts did not violate the reasonable
8 scope of the Agreement because such conduct does not entail management of or creation of
9 cardiology services. TT 141.

10 16. In connection with these proceedings, DeValk stipulated, admitted and conceded,
11 without admitting that he ever did so, that he will not disclose or divulge any Renown
12 confidential documents or information to Saint Mary's, or to any third person, except as
13 specifically permitted in the Agreement, and that he will not solicit employees of Renown for the
14 period of time specified in the Agreement.

15 17. Renown will suffer irreparable damage in the event DeValk is not enjoined and
16 restrained from engaging in the creation of new employment relationships with cardiology
17 development, cardiology practice, supervision of cardiology employees, or management of
18 cardiology practices for Saint Mary's. TT 140.

19 **Conclusions of Law**

20 1. The Parties freely and voluntarily entered into the Agreement.

21 2. The Agreement, limited to cardiology business practices, is reasonable as to its
22 geographic limitations and time duration.

23 3. The limitations as to scope, however, are excessive and unreasonable, and are
24 broader than necessary to protect the legitimate business interests of Renown, and broader than
25 necessary to protect Renown from DeValk from engaging in conduct and activities that he
26 engaged in for and on behalf of Renown, and which conduct and activities also matched what he
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1 was doing for the 7-year period at RHP prior to the transaction in which Renown acquired RHP
2 and employed DeValk. TT 139.

3 4. Renown will suffer irreparable harm if DeValk is not enjoined and restrained from
4 engaging in the creation of new employment relationships with cardiology development,
5 cardiology practice, or supervision of cardiology employees or management of cardiology
6 practices for Saint Mary's. TT 140.

7 5. Renown is likely to succeed on the merits of its claim that DeValk breached the
8 terms of the Agreement by engaging in the activities described in conclusion of law 4 above
9 during the period of time he engaged in such activities at Saint Mary's, but which he stopped
10 doing in June 2013.

11 6. The balance of harms tilts in favor of Renown and against DeValk in connection
12 with restraining or enjoining DeValk from engaging in the activities described in conclusion of
13 law 4 above, but tilts in favor of DeValk with respect to activities not covered in conclusion of
14 law 4.

15 7. DeValk stipulated that he would not engage in the activities described in
16 conclusion of law 4 above for the duration of the Agreement;

17 8. The grant or denial of injunctive relief is within the reasonable discretion of the
18 court.

19 9. Having balanced the equities and the harm, including the extent of the injunctive
20 relief requested by Renown, and the impact on DeValk of the broader relief requested by
21 Renown, and the incidental or consequential impact on the community and ongoing relationships
22 in the medical community, the court believes that the equities do not favor granting injunctive
23 relief in any amount or degree greater than is specifically granted in this document.

24 10. Under the circumstances involved in the Motion, a nominal bond in the amount of
25 \$1,000 is sufficient to protect DeValk from any wrongful or improper issuance of an injunction,
26 as limited in this document;

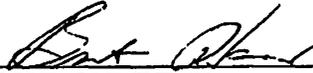
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11. Any findings of fact set forth in this document that are conclusions of law, or conclusions of law that are findings of fact, shall be deemed findings and conclusions as appropriate.

NOW THEREFORE, the Court hereby ORDERS that:

Defendant is enjoined and restrained for the duration of the term of the Agreement (which ends on August 23, 2014), from engaging in cardiology services which are defined as cardiology services which defendant provided for Renown, including the cardiology services that DeValk provided at Saint Mary's until June 2013. TT 141.

IT IS SO ORDERED.



DISTRICT JUDGE
DATED: June 4, 2014