

FTC Approves Settlement of Noncompetition Case Against Renown Health Voiding Ten Physicians' Noncompetition Agreements

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On November 30, 2012, the **Federal Trade Commission** voted 5-0 to approve the settlement of a complaint it filed against Renown Health on August 3, 2012. A settlement was promptly reached between the **FTC** and **Renown Health** avoiding the unwinding of two acquisitions made by Renown Health of two independent local cardiology groups.

The complaint alleged that Renown Health's acquisition of competitor cardiology groups in Reno, Nevada, Sierra Nevada Cardiology Associates, Inc. ("NCA") and Reno Heart Physicians, Inc. ("RHP"), and the employment of the 32 physicians employed by these entities, "is likely to lead to anticompetitive effects including increased prices and reduced non-price competition." The acquisitions resulted in Renown Health employing approximately 97% of the cardiologists serving private patients in the Reno area. The FTC complaint focused on the fact that all of the employed physicians were subject to employment agreements containing noncompetition and non-solicitation provisions prohibiting them from practicing medicine or soliciting former patients for two years in the Reno area after termination of their employment. As a result of the noncompetition and non-solicitation agreements, competition for cardiology services would have to come from without, which the complaint alleged to be unlikely because of certain barriers to market entry. The State of Nevada, through its attorney general, worked with the FTC in investigating and resolving the matter. The Nevada AG filed a similar complaint and entered into an agreement with Renown Health similar to the FTC consent decree.

The parties reached a settlement this fall through an agreed consent decree that would avoid having to unravel the mergers. The FTC has now approved the consent decree under which Renown Health released up to ten cardiologists previously employed by NCA or RHP from their noncompetition and non-solicitation restrictions.

This result signals a cautionary note for those hospitals and health care systems with an overly large market share in a geographical market who seek to further expand their employed physicians in a given practice area. In this case, the 88% market share for the cardiologists was a daunting statistic for Renown Health to overcome. Going forward, this is just one more potential road block that health care providers must consider before acquiring additional physician practices and increasing its employed physician roles.

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