

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

SAMUEL BECK, HERBER BECKER, PETER
BILLHARZ, AJA BJERKE, KARA BJUR,
BRIAN BREWER, BRIAN BUEHLER, CARRIE
BUEHLER, CATHERINE BURTON, JOSHUA
CARTINELLA, NICHOLAS CIRAC, KRISTINA
COGER, GORDON CURRY, SCOTT
DOUGAN, JOANN ELLERO, DARYL FENIO,
DIRK FLETCHER, TOBEY GANSERT,
BENJAMIN GAROL, JEFFREY GRUDZINSKI,
KEITH HANSON, MIN HEIN, JOHN HILTS,
MARK JANES, SCOTT JEANNES, ROBERT
KYPER, SARAH LIM, BRIAN LANDRETH,
KEVIN LASKO, JAY MARKIN, JOHN
MARSHALL, SHANNON MARTIN, MORGAN
MCCARROLL, ERIC MOODY, JOHN
MORTENSEN, CHIAKI NAKANISHI, JOBIN
NASH, MEL NUTTER, EVE NYRHINEN,
SCOTT PARKHILL, PHILIP PHU, NARIMAN
RAHIMZADEH, SURESH RAMAN, SCOTT
REINECK, SHAINA RICHARDSON,
MATTHEW SABATINI, ALAN SARABIA, HEIDI
SARABIA, MITCH SEMAN, KARA SIEVERT,
DANIEL SORENSEN, RYAN STITES, BRIAN
TURCHIOE, and AARON WALLACE,

Case No. CV21-02092

Dept. No. 15

Plaintiffs,

v.

PICKERT MEDICAL GROUP, P.C., a Nevada
Professional Corporation; NORTH AMERICAN
PARTNERS IN ANESTHESIA, L.L.P., a New York

1 Limited Liability Partnership; NAPA
2 MANAGEMENT SERVICES CORPORATION,
3 a New York Corporation; NMSC II, LLC, a
4 Delaware Limited Liability Corporation;
5 AMERICAN ANESTHESIOLOGY, INC., a
6 Florida Corporation; and DOES I-X, inclusive,

7 Defendants.

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PICKERT MEDICAL GROUP, P.C., a Nevada
Professional Corporation,

Third-Party Plaintiff/Third-
Party Counterdefendant,

v.

RENOWN REGIONAL MEDICAL CENTER, a
Nevada Non-Profit Corporation; and RENOWN
SOUTH MEADOWS MEDICAL CENTER, a
Nevada Non-Profit Corporation,

Third-Party Defendants/Third-
Party Counterclaimants.

ORDER DENYING INJUNCTIVE AND OTHER RELIEF

Before this Court is Plaintiffs' emergency motion for declaratory relief, or in the alternative, motion for partial summary judgment. The motion was filed before the preliminary injunction hearing was concluded. The plaintiff physicians now de-link their resignations from the Professional Services Agreement between Renown and Pickert and unequivocally resign from their employment with Pickert, which they have the unfettered right to do. The physicians' unequivocal resignations and Renown's declaration of termination have altered the narrative, immediacy, and alleged harm first presented in the requests for injunctive relief.

This Court has read and heard Plaintiffs' arguments about the public health crisis they seek to avoid. This Court is not unsympathetic to the Plaintiff physicians; indeed, this Court expressed its inclination the physicians need some form of relief from the

1 unworkable burdens of their employment.¹ But as this Court has repeatedly said in oral
2 pronouncement, premature judicial intervention creates a risk of injustice that cannot be
3 remedied. Of equal legal importance is this Court's obligation to also protect contractual
4 expectancies—even when one of the contracting parties is a New York private equity firm
5 that is purportedly “unwelcome” in the Northern Nevada medical market. Contractual
6 expectancies are protected when the judicial process is procedurally fair, regardless of the
7 adjudicative outcome. The Plaintiff physicians may ultimately obtain relief from their
8 restrictive covenants, but this Court will not be pressured to intervene with a judicial
9 declaration before substantive and procedural process is afforded to all parties.

10 In opposition, Pickert concedes the physician resignations terminate its presence
11 and efficacy in the Northern Nevada market. Pickert withdraws its request for injunctive
12 relief and concedes that all of its physicians have the ability to resign and immediately
13 begin working in Northern Nevada under whatever circumstances they individually
14 choose—to include working directly for or with Renown. Thus, this dispute becomes one
15 of money damages if Pickert seeks to enforce its noncompete rights against its former
16 physicians and its no-hire rights against Renown.

17 Plaintiffs have demanded that this Court make a decision before March 31, 2022.²
18 This Court will now do so consistent with its understanding and obligations under the
19 law, in light of the incomplete injunction proceeding that remains pending. A preliminary
20 injunction is an extraordinary remedy that should be cautiously granted. Its overarching
21 purpose is to preserve the status quo so no party has the benefit over another, no
22 irreparable harm is suffered, and no final outcome is determined before its time.³

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25 ¹ The cause of the unworkable burdens, *i.e.*, NAPA's alleged “profits-over-patients measures” or the
26 persistent shortage of anesthesiologists plaguing local and national medical facilities, is a fact question yet to
be determined.

27 ² Plaintiffs argue that “[w]hatever route the Court takes, it must walk down that path now.”

28 ³ The Nevada judiciary was born in the chaos of mining litigation during the territorial time of 1861-1864.
The territorial judiciary was widely criticized for its frequent and liberal use of injunctive powers, which
established *de facto* outcomes at the beginning of litigation without evidence or other fair proceedings. See
generally Bruce Alverson, *The Limits of Power: Comstock Litigation, 1859-1864*, NEVADA HISTORICAL SOCIETY

1 Injunctions are governed by NRS 33.010 and NRCP 65. They may be issued to
2 restrain the continuation of an act during litigation where such continuation would
3 "produce great or irreparable injury to plaintiff," or when it appears the defendant is
4 doing some act in violation of the plaintiffs' rights respecting the subject of the action.
5 NRS 33.010(2)-(3). The applicant must show: 1) "a likelihood of success on the merits,"
6 and 2) a reasonable probability that the non-moving party's conduct, if allowed to
7 continue, will cause "irreparable harm for which compensatory damage is an inadequate
8 remedy." Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142, 978 P.2d 311, 319 (1999)
9 (citing Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992));
10 see also NRS 33.010. In considering preliminary injunctions, courts also weigh the
11 potential hardships to the relative parties and others, and to the public interest. University
12 Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

13 The party moving for injunctive relief has the burden of proving the injunction is
14 supported by substantial evidence. Finkel v. Cashman Prof'l, Inc., 128 Nev. 68, 72-73, 270
15 P.3d 1259, 1262 (2012); S.O.C. Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 408, 23 P.3d 243,
16 246 (2001). Substantial evidence is "that which 'a reasonable mind might accept as
17 adequate to support a conclusion.'" McClanahan v. Raley's Inc., 117 Nev. 921, 924, 34 P.3d
18 573, 576 (2001) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d
19 497, 498 (1986)).

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21 QUARTERLY 43, no. 1 (Spring 2000). Thus, shortly after statehood, the Nevada Supreme Court emphasized
the importance of judicial normalcy in injunction proceedings:

22 The facility with which injunctions have been obtained from the courts in
23 this state seems to have made the application for them almost a matter of
24 course in every conceivable character of case. When the law appears to
25 afford no specific remedy for some petty annoyance or imaginary wrong,
26 this writ is applied for as if it were the great sovereign and infallible
27 remedy – the legal panacea for every ill that may arise in the complicated
affairs of man. But unfortunately, perhaps, the writ of injunction does not
possess these marvelous virtues and limitless powers. Its office is limited,
and it is generally employed only as an auxiliary remedy.

28 Sherman v. Clark, 4 Nev. 138, 140 (1868) (in citing Sherman, this Court does not describe Plaintiffs' action as
"some petty annoyance or imaginary wrong." This Court cites Sherman to illustrate the long-known risks of
premature injunctive relief.).

1 Plaintiff Renown has adduced prima facie evidence that Pickert breached the
2 staffing grid, but it has not yet demonstrated to this Court's satisfaction that there was a
3 material breach of the PSA. The Plaintiff physicians have not yet demonstrated they are
4 entitled to preemptive relief from their non-restrictive covenants or that they will
5 personally suffer non-compensable irreparable harm if injunctive relief is not granted. As
6 noted from the outset, this Court cannot summarily adjudicate the restrictive covenants as
7 categories without specific factual analyses of each physician's circumstances. Moreover,
8 Renown's unequivocal termination of the PSA and the physicians' unequivocal
9 resignation from Pickert remove the risk of irreparable harm to public health and make
10 compensatory damages, if any, an adequate remedy.

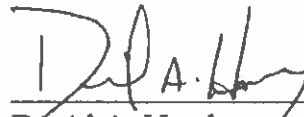
11 The injunctive relief sought by Renown and the physician plaintiffs would
12 irreparably alter the status quo by removing Pickert from the market with finality, in a
13 manner that could not be remedied after a full adjudication on the merits. Renown and
14 the physicians have chosen to alter the status quo with finality, as they have the right to
15 do, but their actions are without the immunity imprimatur they seek. Accordingly,
16 Plaintiffs' motions for preliminary injunction are denied without prejudice. The Plaintiff
17 physicians' emergency motion for declaratory relief and/or motion for partial summary
18 judgment is denied. Pickert has withdrawn its motion for preliminary injunction. Cause
19 appearing, the continued preliminary injunction hearing is vacated, and all pending
20 submissions are denied without prejudice.

21 The plaintiff physicians and Renown may choose to enter into any professional
22 relationship they wish to protect their financial interests and preserve the continuity of
23 medical care to which they are undoubtedly committed. All parties may choose to litigate
24 compensatory damages as they wish. Any amended pleadings shall be filed within 60
25 days from the date of this order, and this dispute will be conducted in the ordinary course
26 of civil litigation focused on the propriety or impropriety of money damages. Pickert's
27 alleged contractual right to arbitration shall be presented in a motion to compel and not
28 summarily adjudicated from the papers before this Court.

1 This Court orally pronounced its willingness to coordinate with the Administrative
2 Office of Courts to obtain coverage for its existing calendared dockets so it could examine
3 each physician's claim to relief from the restrictive covenants consistent with NRS 613.195,
4 which it has always identified as an issue separate and subordinate to the PSA contractual
5 dispute between Renown and Pickert. This Court remains willing to do so if the physician
6 agreements are not referred to mandatory arbitration. This Court presumes its initial
7 decisions for a few physicians within each category of restrictive covenant will foreshadow
8 its decisions for other similarly situated physicians, thus allowing the parties to anticipate
9 their affairs as they seek resolution of this dispute. Absent a request and compelling
10 authorities, this Court does not contemplate how it can summarily resolve the restrictive
11 no-hire provision in the PSA without a full adjudication on the merits.

12 **IT IS SO ORDERED.**

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14 Dated: March 30, 2022.

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17 David A. Hardy
18 District Court Judge
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