

Electronically Filed
Mar 20 2019 09:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FIELDEN HANSON ISAACS MIYADA
ROBISON YEH, LTD.,

Case No.: A-18-783054-C

Dept.: 16

Plaintiffs,

NOTICE OF APPEAL

vs.

DEVIN CHERN TANG, M.D., SUN
ANESTHESIA SOLUTIONS, A Nevada
Corporation, DOE Defendants I-X,

Defendants.

Notice is hereby given that Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., by and through its attorneys, the law firm of Dickinson Wright PLLC, hereby appeals to the Supreme Court of Nevada from the February 5, 2019 Order Denying Motion for Preliminary Injunction. Notice of Entry the February 5, 2019 Order Denying Motion for Preliminary Injunction was filed on February 8, 2019.

DATED this 11th day of March 2019.

DICKINSON WRIGHT PLLC



MICHAEL N. FEDER

Nevada Bar No. 7332

GABRIEL A. BLUMBERG

Nevada Bar No. 12332

8363 West Sunset Road, Suite 200

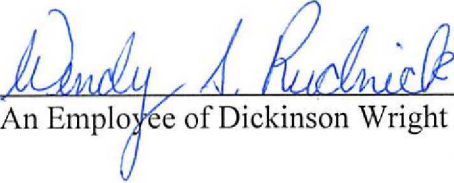
Las Vegas, Nevada 89113-2210

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 11th day of March 2019, a copy of **NOTICE OF APPEAL** to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

Martin A. Little, Esq.
mal@h2law.com
Ryan T. O'Malley
rto@h2law.com
HOWARD & HOWARD PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
Attorneys for Defendants


An Employee of Dickinson Wright PLLC

CASE SUMMARY**CASE NO. A-18-783054-C**

Fielden Hanson Isaacs Miyada Robison Yeh Ltd., Plaintiff
(s)
vs.
Devin Tang, M.D., Defendant(s)

§
§
§
§
§

Location: **Department 16**
 Judicial Officer: **Williams, Timothy C.**
 Filed on: **10/18/2018**
 Cross-Reference Case Number: **A783054**

CASE INFORMATIONCase Type: **Employment Contract**

Case
Status: **10/18/2018 Open**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-783054-C
 Court Department 16
 Date Assigned 10/18/2018
 Judicial Officer Williams, Timothy C.

PARTY INFORMATION**Plaintiff****Fielden Hanson Isaacs Miyada Robison Yeh Ltd.***Lead Attorneys*

Feder, Michael N., ESQ
Retained
 702-382-4002(W)

U.S. Anesthesia Partners

Removed: 02/26/2019
 Inactive

Feder, Michael N., ESQ
Retained
 702-382-4002(W)

Defendant**Sun Anesthesia Solutions**

Little, Martin A.
Retained
 7026997500(W)

Tang, M.D., Devin Chern

Little, Martin A.
Retained
 7026997500(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

10/18/2018

**Complaint**

Filed By: Plaintiff U.S. Anesthesia Partners
Complaint for Damages

10/19/2018

**Initial Appearance Fee Disclosure**

Filed By: Plaintiff U.S. Anesthesia Partners
Initial Appearance Fee Disclosure

10/19/2018

**Summons Electronically Issued - Service Pending**

Party: Plaintiff U.S. Anesthesia Partners
Summons - Sun Anesthesia Solutions

10/19/2018

**Summons Electronically Issued - Service Pending**

Party: Plaintiff U.S. Anesthesia Partners
Summons

CASE SUMMARY

CASE NO. A-18-783054-C


10/19/2018	 Motion for Preliminary Injunction Filed By: Plaintiff U.S. Anesthesia Partners <i>Plaintiff's Motion and Notice of Motion for Preliminary Injunction</i>
10/24/2018	 Affidavit of Service Filed By: Plaintiff U.S. Anesthesia Partners <i>Affidavit/Declaration of Service - Sun Anesthesia Solutions</i>
11/06/2018	 Request Filed by: Plaintiff U.S. Anesthesia Partners <i>Plaintiff's Request for Hearing on Plaintiff's Motion for Preliminary Injunction be Set on Order Shortening Time</i>
11/09/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Defendants' Initial Appearance Fee Disclosure</i>
11/09/2018	 Opposition Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Opposition to Plaintiff's Request for Hearing on Plaintiff's Motion for Preliminary Injunction</i>
11/12/2018	 Disclosure Statement Party: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>NRCP 7.1 Disclosure Statement</i>
11/15/2018	 Reply Filed by: Plaintiff U.S. Anesthesia Partners <i>Plaintiff's Reply Re: Motion for Preliminary Injunction on Order Shortening Time</i>
11/16/2018	 Errata Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Erratum to NRCP 7.1 Disclosure Statement</i>
11/16/2018	 Answer Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Answer</i>
11/16/2018	 Supplement to Opposition Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Supplement to Opposition to Motion for Preliminary Injunction</i>
12/07/2018	 Supplemental Filed by: Defendant Tang, M.D., Devin Chern <i>Supplemental Authorities in Support of Opposition to Motion for Preliminary Injunction</i>
12/07/2018	 Supplemental Filed by: Plaintiff U.S. Anesthesia Partners <i>Plaintiff's Supplemental Reply Re: Plaintiff's Motion for Preliminary Injunction on Order Shortening Time</i>
12/17/2018	 Request for Exemption From Arbitration Filed by: Plaintiff U.S. Anesthesia Partners <i>Plaintiff's Request for Exemption from Arbitration</i>

CASE SUMMARY

CASE NO. A-18-783054-C

12/28/2018	 Substitution of Attorney <i>Substitution of Counsel for Plaintiff U.S. Anesthesia Partners</i>
01/04/2019	 Commissioners Decision on Request for Exemption - Granted <i>COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION - GRANTED</i>
02/05/2019	 Order Denying Motion Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Order Denying Motion for Preliminary Injunction</i>
02/08/2019	 Notice of Entry Filed By: Plaintiff U.S. Anesthesia Partners <i>Notice of Entry of Order Denying Motion for Preliminary Injunction</i>
02/21/2019	 Motion Filed By: Plaintiff U.S. Anesthesia Partners <i>Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Reconsideration on Order Shortening Time</i>
02/26/2019	 Stipulation and Order Filed by: Plaintiff U.S. Anesthesia Partners <i>Stipulation and Order to Change Caption</i>
02/26/2019	 Notice of Entry of Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh Ltd. <i>Notice of Entry of Stipulation and Order to Change Caption</i>
02/27/2019	 Stipulation and Order Filed by: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Stipulation and Order to Continue Hearing on Motion for Reconsideration</i>
02/28/2019	 Notice of Entry Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion For Reconsideration</i>
03/04/2019	 Opposition to Motion Filed By: Defendant Tang, M.D., Devin Chern; Defendant Sun Anesthesia Solutions <i>Opposition to Motion for Reconsideration</i>
03/05/2019	 Reply Filed by: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh Ltd. <i>Plaintiff's Reply in Support of Motion for Reconsideration</i>
03/11/2019	 Notice of Appeal Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh Ltd. <i>Notice of Appeal</i>

HEARINGS

11/19/2018	 Motion for Preliminary Injunction (9:30 AM) (Judicial Officer: Williams, Timothy C.) 11/19/2018, 12/14/2018 <i>Plaintiff's Motion and Notice of Motion for Preliminary Injunction</i> Decision Pending; Motion Denied;
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-783054-C

Journal Entry Details:

After a review and consideration of the Motion for Preliminary Injunction filed by Plaintiff U.S. Anesthesia Partners (USAP) and oral argument of counsel, the Court determined as follows: The Facilities referenced in the Non-Competition section of the Employment Agreement between USAP and Devin Chern Tang (Tang) are so vague as to render the non-competition agreement unreasonable in its scope. As defined the Employment Agreement, the facilities from which Tang would be prohibited from soliciting business include; all facilities with which USAP has a contract to supply healthcare providers, facilities at which such providers provided Anesthesiology and Pain Management services, and facilities with which USAP had active negotiations, all during the unspecified term of Tang s employment and the 12 months preceding his term of employment. The non-competition agreement fails to designate facilities or a geographic boundary where Tang is prohibited from soliciting business with any specificity. The non-competition agreement fails to consider whether USAP s active contracts survive or USAP s active negotiations yield active contracts by the end of Tang s term of employment. At the time of signing the agreement, this potentially prohibited Tang from soliciting any of USAP s current or future customers. The non-competition agreement between USAP and Tang lacks both a geographic limitation and qualifying language distinguishing the particular facilities or customers to which it applies. The non-competition agreement is therefore unreasonable in its scope. Based on the foregoing, Plaintiff USAP s Motion for Preliminary Injunction shall be DENIED. Counsel for Tang shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK S NOTE: This Minute Order was electronically served to the parties through Odyssey eFile.;

Decision Pending;

Motion Denied;

Journal Entry Details:

Arguments by counsel as to Pltf's Motion for Preliminary Injunction. COURT ORDERED, two-page summary supplemental briefs DUE 12/7/18 regarding geographical limitations as discussed. FURTHER ORDERED, Chambers Decision date SET. CONTINUED TO: 12/14/18 (CHAMBERS);

12/07/2018

Status Check (3:00 AM) (Judicial Officer: Williams, Timothy C.)

Status Check (ISC): Supplemental Briefs for Motion for Preliminary Injunction

03/06/2019



Motion For Reconsideration (9:00 AM) (Judicial Officer: Williams, Timothy C.)

03/06/2019, 04/04/2019

Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Reconsideration on Order Shortening Time

Set for 3/13/19 by Clerk's Office--Should have been set for 3/7/19

Continued for Chambers Decision;

Journal Entry Details:

Matter of Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Reconsideration. Arguments by counsel. Court directed supplemental briefing on issue of AB 276 impact and retroactive applicability. COURT ORDERED, simultaneous supplemental briefs DUE 3/22/19; CONTINUED for Chambers Decision. 4/4/19 DECISION: MOTION FOR RECONSIDERATION;

03/22/2019

Status Check (3:00 AM) (Judicial Officer: Williams, Timothy C.)

Status Check (ISC): Supplemental Briefs for Motion for Reconsideration

DATE

FINANCIAL INFORMATION

Plaintiff U.S. Anesthesia Partners

Total Charges

270.00

Total Payments and Credits

270.00

Balance Due as of 3/14/2019

0.00

Defendant Tang, M.D., Devin Chern

Total Charges

253.00

Total Payments and Credits

253.00

Balance Due as of 3/14/2019

0.00

Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh Ltd.

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-783054-C

Total Charges	24.00
Total Payments and Credits	24.00
Balance Due as of 3/14/2019	0.00

DISTRICT COURT CIVIL COVER SHEET

A-18-783054-C

Clark

County, Nevada

Department 16

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

U.S. Anesthesia Partners

Defendant(s) (name/address/phone):

Devin Chern Tang, M.D.

Sun Anesthesia Solutions, A Nevada Corporation

Attorney (name/address/phone):

John H. Cotton, Esq.; Adam Schneider, Esq.

John H. Cotton & Associates, Ltd.

7900 West Sahara Ave., Ste. 200

Las Vegas, NV 89117; T: (702) 832-5909

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input checked="" type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

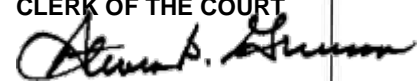
Business Court filings should be filed using the Business Court civil coversheet.

October 18, 2018

Date

Signature of initiating party or representative

See other side for family-related case filings.



ODM

Martin A. Little, (#7067)
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E-Mail: mal@h2law.com; rto@h2law.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. ANESTHESIA PARTNERS,

Plaintiff,

CASE NO. A-18-783054-C

DEPT. NO. XVI

vs.

DEVIN CHERN TANG, M.D., SUN
ANESTHESIA SOLUTIONS, A Nevada
Corporation, DOE Defendants I-X,

Defendants.

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

On October 19, 2018, Plaintiff U.S. Anesthesia Partners (“USAP” or “Plaintiff”) filed its Motion for Preliminary Injunction. Defendants Devin Chern Tang (“Dr. Tang”) and Sun Anesthesia Solutions (“Sun Anesthesia”) (collectively “Defendants”) opposed the Motion on November 9, 2018. USAP submitted a Reply in support of its Motion on November 15, 2018. On November 16, 2018, Defendants submitted a supplemental Declaration in support of their Opposition.

The Court heard the Motion on November 19, 2018. After argument, the Court ordered supplemental briefing on the enforceability of covenants not to compete lacking a geographic limitation. The parties timely submitted their supplemental briefs on December 7, 2018.

Having considered the record, the briefing, and the arguments of counsel, and good cause appearing, the Court finds as follows:

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01-31-19P12:46 RCVD

FINDINGS OF FACT

1. In August of 2016, Dr. Tang accepted a position with Premier Anesthesiology Consultants ("PAC"), which was a subsidiary of an entity called Anesthesiology Consultants, Inc. ("ACI").

2. In or around December of 2016, PAC/ACI was acquired by USAP.

3. In connection with this acquisition, Dr. Tang executed a Physician-Track Employment Agreement ("Employment Agreement") as a condition of his continued employment with USAP. (*Id.*)

4. The Employment Agreement contained the following Non-Competition Clause:

In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

5. The Employment Agreement defines "Facilities" as follows:

All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12)

months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities"

6. In or around March of 2018, Dr. Tang provided 90 days' notice of his intent to terminate his employment with USAP in the manner provided by the Employment Agreement.

7. In or around June of 2018, Dr. Tang's notice period expired, and his employment with USAP was terminated.

8. Dr. Tang continued to work as an anesthesiologist after his departure from USAP by accepting overflow anesthesiology cases from University Medical Center and an anesthesiology practice called Red Rock Anesthesia Solutions ("Red Rock").

9. USAP became aware that Dr. Tang had performed anesthesia services at Southern Hills Hospital and St. Rose Dominican Hospital – San Martin Campus. USAP has contractual relationships with these facilities, and USAP therefore believed that Dr. Tang's conduct violated Employment Agreement. This lawsuit followed.

CONCLUSIONS OF LAW

1. The "Facilities" referenced in the Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang is so vague as to render the non-competition agreement unreasonable in its scope. As defined by the Non-Competition Clause of the Employment Agreement, the Facilities from which Dr. Tang would be prohibited from providing anesthesia services and/or soliciting business include:

- a. All Facilities with which USAP has a contract to supply healthcare providers;
 - b. Facilities at which those providers provided anesthesiology and pain management services; and
 - c. Facilities with which USAP had active negotiations;
- all during the unspecified term of Dr. Tang's employment and the twelve months preceding his term of employment.

2. The Non-Competition Clause of the Employment Agreement fails to designate facilities or a geographic boundary where Dr. Tang is prohibited from working and/or soliciting business with any specificity.

3. The Non-Competition Clause of the Employment Agreement fails to consider whether USAP's active contracts with facilities survive or whether USAP's active negotiations yield active contracts by the end of Tang's term of employment. At the time of signing the Employment Agreement, this potentially prohibited Tang from working with and/or soliciting any of USAP's current or future customers.

4. The scope of the Non-Competition Clause is subject to change over the course of Dr. Tang's employment, and even after his departure, based upon relationships with facilities USAP establishes after execution of the Employment Agreement. Dr. Tang therefore could not reasonably ascertain or anticipate the geographic scope of the non-competition agreement at the time of its execution.

5. The Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang lacks any geographic limitation or qualifying language distinguishing the particular Facilities or customers to which it applies.

6. The Court does not have authority to "blue pencil" the Non-Competition Clause of the Employment Agreement because the amendment to NRS Chapter 613, more particularly NRS 613.195(5), does not apply retroactively to agreements entered into prior to the enactment of the amendment, which agreements are governed by *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151 (2016).

7. The Non-Competition Clause of the Employment Agreement is therefore unreasonable in its scope.

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ORDER

Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, the Court ORDERS, ADJUDGES, AND DECREES that USAP's Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

HONORABLE TIMOTHY C. WILLIAMS

Respectfully submitted by:

HOWARD & HOWARD ATTORNEYS PLLC

Approved as to form and content by:

DICKINSON WRIGHT PLLC

Martin A. Little (#7067)
Ryan T. O'Malley (#12461)
3800 Howard Hughes Parkway, Ste. 1000
Las Vegas, NV 89169
Attorneys for Defendants

Michael N. Feder (#7332)
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8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Attorneys for Plaintiff

ORDER

Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, the Court ORDERS, ADJUDGES, AND DECREES that USAP's Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

DATED this 31 day of January, 2019.

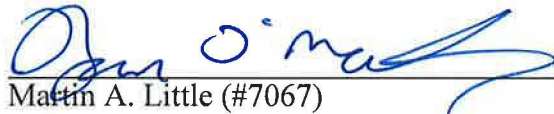

HONORABLE TIMOTHY C. WILLIAMS ^{CL}

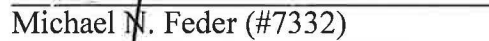
Respectfully submitted by:

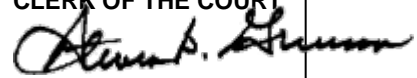
Approved as to form and content by:

HOWARD & HOWARD ATTORNEYS PLLC

DICKINSON WRIGHT PLLC


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Las Vegas, NV 89169
Attorneys for Defendants


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Attorneys for Plaintiff



NEO

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Ryan T. O'Malley (#12461)

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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. ANESTHESIA PARTNERS,

Plaintiff,

vs.

DEVIN CHERN TANG, M.D., SUN
ANESTHESIA SOLUTIONS, A Nevada
Corporation, DOE Defendants I-X,

Defendants.

CASE NO. A-18-783054-C

DEPT. NO. XVI

**NOTICE OF ENTRY OF ORDER
DENYING MOTION FOR
PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that an *ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION* was filed in the above-captioned matter on February 5, 2019. A true and correct copy of said order is attached hereto.

DATED this 8th day of February, 2019.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Ryan T. O'Malley

By: _____

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

3800 Howard Hughes Parkway, #1000

Las Vegas, Nevada 89169

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, 10th Floor, Las Vegas, Nevada, 89169.

On this day I served the **NOTICE OF ENTRY OF ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

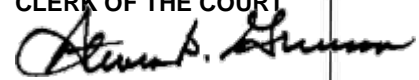
John H. Cotton (#5268)
Adam Schneider (#10216)
JOHN H. COTTON & ASSOCIATES
7900 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 832-5909
Facsimile: (702) 832-5910
Attorneys for Plaintiff

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **February 8, 2019**, at Las Vegas, Nevada.

/s/ Anya Ruiz

An Employee of Howard & Howard Attorneys PLLC

4847-6462-7592, v. 1



ODM

Martin A. Little, (#7067)
Ryan T. O'Malley (#12461)
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E-Mail: mal@h2law.com; rto@h2law.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. ANESTHESIA PARTNERS,

Plaintiff,

CASE NO. A-18-783054-C

DEPT. NO. XVI

vs.

DEVIN CHERN TANG, M.D., SUN
ANESTHESIA SOLUTIONS, A Nevada
Corporation, DOE Defendants I-X,

Defendants.

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

On October 19, 2018, Plaintiff U.S. Anesthesia Partners ("USAP" or "Plaintiff") filed its Motion for Preliminary Injunction. Defendants Devin Chern Tang ("Dr. Tang") and Sun Anesthesia Solutions ("Sun Anesthesia") (collectively "Defendants") opposed the Motion on November 9, 2018. USAP submitted a Reply in support of its Motion on November 15, 2018. On November 16, 2018, Defendants submitted a supplemental Declaration in support of their Opposition.

The Court heard the Motion on November 19, 2018. After argument, the Court ordered supplemental briefing on the enforceability of covenants not to compete lacking a geographic limitation. The parties timely submitted their supplemental briefs on December 7, 2018.

Having considered the record, the briefing, and the arguments of counsel, and good cause appearing, the Court finds as follows:

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01-31-19P12:46 RCVD

FINDINGS OF FACT

1. In August of 2016, Dr. Tang accepted a position with Premier Anesthesiology Consultants ("PAC"), which was a subsidiary of an entity called Anesthesiology Consultants, Inc. ("ACI").

2. In or around December of 2016, PAC/ACI was acquired by USAP.

3. In connection with this acquisition, Dr. Tang executed a Physician-Track Employment Agreement ("Employment Agreement") as a condition of his continued employment with USAP. (*Id.*)

4. The Employment Agreement contained the following Non-Competition Clause:

In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

5. The Employment Agreement defines "Facilities" as follows:

All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12)

months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities"

6. In or around March of 2018, Dr. Tang provided 90 days' notice of his intent to terminate his employment with USAP in the manner provided by the Employment Agreement.

7. In or around June of 2018, Dr. Tang's notice period expired, and his employment with USAP was terminated.

8. Dr. Tang continued to work as an anesthesiologist after his departure from USAP by accepting overflow anesthesiology cases from University Medical Center and an anesthesiology practice called Red Rock Anesthesia Solutions ("Red Rock").

9. USAP became aware that Dr. Tang had performed anesthesia services at Southern Hills Hospital and St. Rose Dominican Hospital – San Martin Campus. USAP has contractual relationships with these facilities, and USAP therefore believed that Dr. Tang's conduct violated Employment Agreement. This lawsuit followed.

CONCLUSIONS OF LAW

1. The "Facilities" referenced in the Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang is so vague as to render the non-competition agreement unreasonable in its scope. As defined by the Non-Competition Clause of the Employment Agreement, the Facilities from which Dr. Tang would be prohibited from providing anesthesia services and/or soliciting business include:

- a. All Facilities with which USAP has a contract to supply healthcare providers;
 - b. Facilities at which those providers provided anesthesiology and pain management services; and
 - c. Facilities with which USAP had active negotiations;
- all during the unspecified term of Dr. Tang's employment and the twelve months preceding his term of employment.

2. The Non-Competition Clause of the Employment Agreement fails to designate facilities or a geographic boundary where Dr. Tang is prohibited from working and/or soliciting business with any specificity.

3. The Non-Competition Clause of the Employment Agreement fails to consider whether USAP's active contracts with facilities survive or whether USAP's active negotiations yield active contracts by the end of Tang's term of employment. At the time of signing the Employment Agreement, this potentially prohibited Tang from working with and/or soliciting any of USAP's current or future customers.

4. The scope of the Non-Competition Clause is subject to change over the course of Dr. Tang's employment, and even after his departure, based upon relationships with facilities USAP establishes after execution of the Employment Agreement. Dr. Tang therefore could not reasonably ascertain or anticipate the geographic scope of the non-competition agreement at the time of its execution.

5. The Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang lacks any geographic limitation or qualifying language distinguishing the particular Facilities or customers to which it applies.

6. The Court does not have authority to "blue pencil" the Non-Competition Clause of the Employment Agreement because the amendment to NRS Chapter 613, more particularly NRS 613.195(5), does not apply retroactively to agreements entered into prior to the enactment of the amendment, which agreements are governed by *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151 (2016).

7. The Non-Competition Clause of the Employment Agreement is therefore unreasonable in its scope.

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ORDER

Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, the Court ORDERS, ADJUDGES, AND DECREES that USAP's Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

HONORABLE TIMOTHY C. WILLIAMS

Respectfully submitted by:

HOWARD & HOWARD ATTORNEYS PLLC

Approved as to form and content by:

DICKINSON WRIGHT PLLC

Martin A. Little (#7067)
Ryan T. O'Malley (#12461)
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Attorneys for Defendants

Michael N. Feder (#7332)
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8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Attorneys for Plaintiff

ORDER

Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, the Court ORDERS, ADJUDGES, AND DECREES that USAP's Motion for Preliminary Injunction is DENIED.

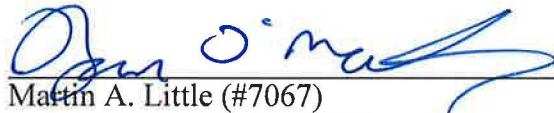
IT IS SO ORDERED.

DATED this 31 day of January, 2019.


HONORABLE TIMOTHY C. WILLIAMS ^{CL}

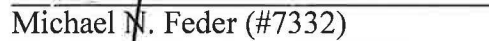
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Las Vegas, Nevada 89113
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Contract

COURT MINUTES

November 19, 2018

A-18-783054-C Fielden Hanson Isaacs Miyada Robison Yeh Ltd., Plaintiff(s)
vs.
Devin Tang, M.D., Defendant(s)

**November 19, 2018 9:30 AM Motion for Preliminary
Injunction**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Cotton, John H Attorney
O'Malley, Ryan Attorney
Schneider, Adam A. Attorney

JOURNAL ENTRIES

- Arguments by counsel as to Pltff's Motion for Preliminary Injunction. COURT ORDERED, two-page summary supplemental briefs DUE 12/7/18 regarding geographical limitations as discussed. FURTHER ORDERED, Chambers Decision date SET.

CONTINUED TO: 12/14/18 (CHAMBERS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Contract

COURT MINUTES

December 14, 2018

A-18-783054-C Fielden Hanson Isaacs Miyada Robison Yeh Ltd., Plaintiff(s)
vs.
Devin Tang, M.D., Defendant(s)

**December 14, 2018 3:00 AM Motion for Preliminary
Injunction**

HEARD BY: Williams, Timothy C. **COURTROOM:** No Location

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- After a review and consideration of the Motion for Preliminary Injunction filed by Plaintiff U.S. Anesthesia Partners (USAP) and oral argument of counsel, the Court determined as follows:

The Facilities referenced in the Non-Competition section of the Employment Agreement between USAP and Devin Chern Tang (Tang) are so vague as to render the non-competition agreement unreasonable in its scope.

As defined the Employment Agreement, the facilities from which Tang would be prohibited from soliciting business include; all facilities with which USAP has a contract to supply healthcare providers, facilities at which such providers provided Anesthesiology and Pain Management services, and facilities with which USAP had active negotiations, all during the unspecified term of Tang s employment and the 12 months preceding his term of employment.

The non-competition agreement fails to designate facilities or a geographic boundary where Tang is prohibited from soliciting business with any specificity.

The non-competition agreement fails to consider whether USAP s active contracts survive or USAP s

active negotiations yield active contracts by the end of Tang's term of employment. At the time of signing the agreement, this potentially prohibited Tang from soliciting any of USAP's current or future customers.

The non-competition agreement between USAP and Tang lacks both a geographic limitation and qualifying language distinguishing the particular facilities or customers to which it applies. The non-competition agreement is therefore unreasonable in its scope.

Based on the foregoing, Plaintiff USAP's Motion for Preliminary Injunction shall be DENIED.

Counsel for Tang shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order was electronically served to the parties through Odyssey eFile.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Contract

COURT MINUTES

March 06, 2019

A-18-783054-C Fielden Hanson Isaacs Miyada Robison Yeh Ltd., Plaintiff(s)
vs.
Devin Tang, M.D., Defendant(s)

**March 06, 2019 9:00 AM Motion For
Reconsideration**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Dana J. Tavaglione

PARTIES

PRESENT: Blumberg, Gabriel A Attorney
 O'Malley, Ryan Attorney

JOURNAL ENTRIES

- Matter of Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Reconsideration. Arguments by counsel. Court directed supplemental briefing on issue of AB 276 impact and retroactive applicability. COURT ORDERED, simultaneous supplemental briefs DUE 3/22/19; CONTINUED for Chambers Decision.

4/4/19 DECISION: MOTION FOR RECONSIDERATION



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MICHAEL N. FEDER, ESQ.
8363 W. SUNSET RD., STE 200
LAS VEGAS, NV 89113

DATE: March 14, 2019
CASE: A-18-783054-C

RE CASE: FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD. vs. DEVIN CHERN TANG, M.D.; SUN ANESTHESIA SOLUTIONS

NOTICE OF APPEAL FILED: March 11, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION; NOTICE OF ENTRY OF ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

FIELDEN HANSON ISAACS MIYADA
ROBISON YEH, LTD.,

Plaintiff(s),

vs.

DEVIN CHERN TANG, M.D.; SUN
ANESTHESIA SOLUTIONS,

Defendant(s),

Case No: A-18-783054-C

Dept No: XVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of March 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk