

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIELDEN HANSON ISAACS MIYADA
ROBISON YEH, LTD.,

Appellants,

v.

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

Respondents.

Supreme Court No. 78358

Electronically Filed
District Court No. A-18-783054-C
Apr 10 2019 04:01 p.m.
Elizabeth A. Brown

DOCKETING STATEMENT
CIVIL APPEALS

1. Judicial District: Eighth Judicial District Court
 County: Clark
 Judge: Timothy C. Williams, Department 16
 District Ct. Case No.: A-18-783054-C

2. **Attorneys filing this docketing statement:**
 Attorneys: Michael N. Feder and Gabriel A. Blumberg
 Telephone: (702) 550-4400
 Firm: Dickinson Wright PLLC
 Address: 8363 West Sunset Road, Suite 200, Las Vegas, NV 89113
 Clients: Appellant Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.

3. **Attorney(s) representing Respondent(s):**
 Attorney: Martin A. Little and Ryan T. O'Malley
 Telephone: (702) 257-1483
 Firm: Howard & Howard PLLC
 Address: 3800 Howard Hughes Pkwy., Suite 1000
 Clients: Devin Chern Tang, M.D. and Sun Anesthesia Solutions

4. **Nature of disposition below (check all that apply):**

- | | |
|--|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Other (specify): Stipulation and Order to Dismiss |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Divorce Decree |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |

5. **Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

N/A

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

A. Factual History

In December 2016, Dr. Tang executed a Physician-Track Employment Agreement (“Employment Agreement”) as a condition of his continued employment with Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. (“Fielden Hanson”). The

Employment Agreement contained a Non-Competition Clause that reasonably sought to prevent Dr. Tang from providing anesthesia and pain management services at medical facilities where he had performed services for Fielden Hanson during the term of the Employment Agreement. Dr. Tang agreed that the Non-Competition Clause was reasonable and consented to entry of injunctive relief to enforce the Non-Competition Clause. Furthermore, the parties agreed that if a court ever determined any provision of the Non-Competition Clause was unreasonable, that court must enforce the remainder of the agreement and revise the offending provision such that it would become enforceable.

In or around March 2018, Dr. Tang provided Fielden Hanson with 90 days' notice of his intent to terminate his employment with Fielden Hanson in the manner provided by the Employment Agreement. In or around June 2018, Dr. Tang's notice period expired, and his employment with Fielden Hanson was terminated.

After ceasing his employment with Fielden Hanson, Dr. Tang continued to work as an anesthesiologist in Clark County and performed anesthesia services at numerous medical facilities in violation of the Non-Competition Clause.

B. Procedural History

Fielden Hanson filed its Complaint and requested a preliminary injunction precluding Dr. Tang from continuing to violate the Non-Competition Clause during the pendency of the action. Dr. Tang filed an answer and alleged the Non-Competition Clause was void because the geographic restrictions were vague.

After a hearing on Fielden Hanson's Motion for Preliminary Injunction, the Court entered its Order Denying Preliminary Injunction. In its Order, the Court incorrectly concluded that the Employment Agreement: (1) "fails to designate facilities or a geographic boundary where Dr. Tang is prohibited from working and/or soliciting business with any specificity" and (2) "lacks any geographic limitation or qualifying language distinguishing the particular Facilities or customers

to which it applies.”

The Court then compounded its inaccurate factual finding by concluding that it “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).” Based on this legal conclusion, the Court refused to modify the Non-Competition Clause to reflect a specific geographic restriction it would have found reasonable.

Fielden Hanson then filed a motion for reconsideration, which remains pending at this time.

9. Issues on appeal.

Whether the district court erred by denying Fielden Hanson’s request for a preliminary injunction based on its conclusions that: (a) the Non-Competition Clause “fails to designate facilities or a geographic boundary where Dr. Tang is prohibited from working and/or soliciting business with any specificity;” (b) the Non-Competition Clause “lacks any geographic limitation or qualifying language distinguishing the particular Facilities or customers to which it applies;” and (c) NRS 613.195 does not apply to the Non-Competition Clause.

10. Pending proceedings in this court raising the same or similar issues.

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

- ☐ Yes
- ☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
 - ☐ An issue arising under the United States and/or Nevada Constitutions
 - ☒ A substantial issue of first impression
 - ☒ An issue of public policy
 - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 - ☐ A ballot question
- If so, explain:

The applicability of NRS 613.195 to non-compete agreements executed prior to its enactment is a matter of first impression for the Nevada Supreme Court. Moreover, because the disposition of this appeal may affect the rights of numerous Nevada employers and employees, this appeal presents an issue of public policy.

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is retained by the Supreme Court under NRAP 17(a)(9), which requires the Supreme Court retain cases originating in business court. This matter also should be heard by the Supreme Court pursuant to NRAP 17(a)(12) because this case involves an issue of statewide public importance.

14. **Trial.** If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**

February 5, 2019

17. **Date written notice of entry of judgment or order was served:**

February 8, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCPP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

N/A.

19. **Date notice of appeal filed.**

March 11, 2019

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other.**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify): | |

(b) **Explain how each authority provides a basis for appeal from the judgment or order:**

This is an appeal from an order denying a request to enter a preliminary injunction.

22. **List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

<u>Appellants/Plaintiffs in the district court:</u>	<u>Respondents/Defendants in the district court:</u>
(1) Fielden Hanson Isaacs Miyada	(1) Devin Chern Tang, M.D.,
Robison Yeh, Ltd.	(2) Sun Anesthesia Solutions

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Appellants' claims:

Breach of Contract

Breach of the Implied Covenant of Good Faith and Fair Dealing

Unjust Enrichment

Tortious Interference with Contractual Relations

Injunctive Relief

Declaratory Relief

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

25. **If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

All claims remain pending.

(b) Specify the parties remaining below:

All parties remain.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

An order denying a preliminary injunction is appealable under NRAP 3A(b)(3).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint and counterclaims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Appellant Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.

DATED this 10th day of April 2019

DICKINSON WRIGHT PLLC



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Counsel of Record for Appellants

Signed in Clark County, Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April 2019, I submitted the foregoing Docketing Statement for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Martin A. Little, Esq.

Ryan T. O'Malley, Esq.

mal@h2law.com

rto@h2law.com

HOWARD & HOWARD PLLC

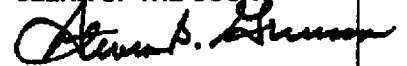
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Las Vegas, NV 89169

/s/ Callie M. Bird

An Employee of Dickinson Wright PLLC

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7 *Attorneys for Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 U.S. ANESTHESIA PARTNERS,

11 Plaintiff,

12 vs.

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

15 Defendant.

A-18-783054-C

Case No.: A-18-

Dept. No.: Department 16

COMPLAINT FOR DAMAGES

16 Plaintiff U.S Anesthesia Partners (herein Plaintiff) by and through its attorneys of record,
17 the law firm of JOHN H. COTTON & ASSOCIATES, LTD., and for its causes of action against
18 Defendant, complains and alleges as follows:

19 **I.**

20 **PARTIES AND JURISDICTION**

21 1. Plaintiff is a foreign corporation, duly licensed to do business in the State of
22 Nevada.
23
24
25

2. Plaintiff employs licensed physicians, certified registered nurse anesthetists and other authorized health care providers to provide anesthesia services and pain management services.

3. Plaintiff provides such services at multiple locations in Las Vegas, NV.

4. Upon information and belief, defendant DEVIN CHERN TANG, M.D. (hereinafter "DEFENDANT TANG") is, and was at all times relevant hereto, a physician licensed to practice in the State of Nevada pursuant to NRS Chapters 449 and 630.

5. All events described herein occurred in Clark County, NV and therefore jurisdiction in the Eight Judicial District Court of Nevada is proper.

II.

GENERAL ALLEGATIONS

6. In December 2016, Defendant Tang signed an Agreement inclusive of non-competition clauses (the "Agreement" or "NCA") with the entity Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc., a Nevada corporation.

7. In November-December 2016, Plaintiff merged and/or acquired and/or joined Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., thereby becoming the employer of Defendant Tang, and becoming the parent company of Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.

8. The Agreement 2.8.1 provision states:

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

1 termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the
2 Practice within the twenty-four month period prior to the date hereof for the
3 purpose of persuading or attempting to persuade any such Facility to cease doing
4 business with, or materially reduce the volume of, or adversely alter the terms
5 with respect to, the business such Facility does with the Practice or any affiliate
6 thereof or in any way interfere with the relationship between any such Facility
7 and the Practice or any affiliate thereof; or (iii) provide management,
8 administrative or consulting services at any of the Facilities at which Physician
9 has provided any management, administrative or consulting services or any
10 Anesthesiology and Pain Management Services (1) in the case of each day during
11 the Term, within the twenty-four month period prior to such day and (2) in the
12 case of the period following the termination of this Agreement, within the twenty-
13 four month period prior to the date of such termination.

14 9. As expressly stated in the Agreement, but for the agreement of Defendant Tang to
15 comply with such covenants Plaintiff would not have agreed to enter into the Agreement with
16 Defendant Tang.

17 10. As expressly stated in the Agreement, Defendant Tang:

18 recognizes that the Practice's decision to enter into this Agreement is induced
19 primarily because of the covenants and assurances made by Physician in this
20 Agreement, that Physician's covenants regarding non-competition and
21 nonsolicitation in this Section 2.8 are necessary to ensure the continuation of the
22 business of the Practice and the reputation of the Practice as a provider of readily
23 available and reliable, high quality physicians, as well as to protect the Practice
24 from unfair business competition, including but not limited to, the improper use of
25 Confidential Information.

11. Exhibit B to the Employment Agreement is Plaintiff's Clinical Code of Conduct
listing an unacceptable behavior as interfering with any contract or business relationship of
USAP.

12. Defendant Tang proceeded to work for Plaintiff and from August 2017-June 2018
as an employee of USAP, Defendant Tang administered anesthesia for the following amount of
procedures/surgeries at the following facilities: 45 at Desert Springs Hospital, 117 at Durango
Outpatient, 12 at Flamingo Surgery Center, 165 at Henderson Hospital, 68 at Horizon Surgery
Center, 37 at Institute of Orthopaedic Surgery, 16 at Las Vegas Surgicare, 106 at MountainView
Hospital, 7 at Parkway Surgery Center, 22 at Sahara Outpatient Surgery Center, 31 at Seven

1 Hills Surgery Center, 138 at Southern Hills Hospital, 55 at Specialty Surgery Center, 43 at
2 Spring Valley Medical Center, 1 at St. Rose-De Lima Campus, 38 at St. Rose- San Martin
3 Campus, 51 at St. Rose- Siena Campus, 160 at Summerlin Hospital, 151 at Sunrise Hospital, 1 at
4 Tenaya Surgical Center, 106 at Valley Hospital, and 74 at Valley View Surgery Center for a total
5 of 1,444 at 22 facilities.

6 13. Defendant Tang's job duties as part and parcel of his employment with Plaintiff
7 included interaction with third-party patients, physicians, and physicians' groups in providing
8 them anesthesiology and pain management services.

9 14. By virtue of the job duties described in the preceding paragraph of this Complaint,
10 Defendant Tang obtained valuable information as to the nature and character of Plaintiff's
11 business, and the names of third-party patients, physicians, and physicians' groups that had
12 ongoing relationships and good will with Plaintiff.

13 15. On April 24, 2018, Defendant Sun Anesthesia Solutions registered as a business
14 entity with the Nevada Secretary of State.

15 16. Defendant Tang is the sole officer listed for Defendant Sun Anesthesia Solutions,
16 and therefore Sun Anesthesia Solutions is the alter ego of Defendant Tang.

17 17. Defendant Tang created and registered Sun Anesthesia Solutions without
18 Plaintiff's knowledge or approval.

19 18. Defendant Tang creating and registering Sun Anesthesia Solutions without
20 Plaintiff's knowledge or approval violated the Agreement.

21 19. Defendant had entered into the Agreement willingly, voluntarily, and without
22 duress.

23 20. On June 3, 2018, Defendant Tang ceased to work for Plaintiff.

24 21. Defendant Tang requested of Plaintiff to waive or make void the Agreement's
25 non-compete provisions.

1 22. Plaintiff denied Defendant Tang's request to waive or make void the Agreement's
2 non-compete provisions as was Plaintiff's expressly reserved right to do so in the Agreement.

3 23. Plaintiff by and through its employees have since discovered and determined that
4 Defendant Tang within two months of ceasing to work for Plaintiff was performing anesthesia
5 services at Southern Hills Hospital Medical Center and St. Rose Dominican Hospital- San Martin
6 Campus.

7 24. On or about July 31, 2018, Dean Polce, D.O., a USAP physician-employee,
8 discovered that Defendant Tang performed anesthesia services at Southern Hills Hospital
9 Medical Center.

10 25. Defendant Tang doing so at Southern Hills Hospital Medical Center violated the
11 express terms of the Employment Agreement.

12 26. Defendant Tang performed those anesthesia services at Southern Hills Hospital
13 Medical Center for local vascular neurologist Tamer Ammar, whom USAP had a prior and
14 ongoing professional relationship.

15 27. Defendant Tang doing so for Dr. Ammar violated the express terms of the
16 Employment Agreement.

17 28. On or about August 17, 2018, Jay Chang, M.D. and Mike Hansen, M.D., both
18 USAP physician-employees, discovered that Defendant Tang performed anesthesia services at
19 St. Rose Dominican Hospital-San Martin Campus.

20 29. Defendant Tang doing so at St. Rose Dominican Hospital-San Martin Campus
21 violated the express terms of the Employment Agreement.

22 30. Defendant Tang performed those anesthesia services at St. Rose Dominican
23 Hospital- San Martin Campus for local general/breast surgeon Anne O'Neill, M.D. whom USAP
24 had a prior and ongoing professional relationship.

25

1 31. Defendant Tang doing so for Dr. O'Neill violated the express terms of the
2 Employment Agreement.

3 32. Based upon information and belief, Defendant Tang provides and continues to
4 provide anesthesia services at other facilities where Plaintiff has established professional
5 relationships and good will.

6 33. Defendant Tang providing such services violates the Agreement.

7 34. Southern Hills Hospital Medical Center is a healthcare facility where Plaintiff by
8 and through its employees regularly conducts business providing anesthesia services, and falls
9 into the definition of "Facility" in the Agreement.

10 35. St. Rose Dominican Hospital- San Martin Campus is a healthcare facility where
11 Plaintiff by and through its employees regularly conducts business providing anesthesia services,
12 and falls into the definition of "Facility" in the Agreement.

13 36. Based upon information and belief, Defendant Tang is employed by or is an
14 independent contractor with Red Rock Anesthesia Consultants, LLC.

15 37. Red Rock Anesthesia Consultants, LLC is headquartered in Las Vegas, NV.

16 38. Red Rock Anesthesia Consultants, LLC is in direct competition with Plaintiff to
17 obtain the business of third-party patients, third-party physicians, and third-party physician
18 groups in need of anesthesia services.

19 39. Upon discovery of Defendant Tang providing anesthesia services at Southern
20 Hills Hospital Medical Center, on August 3, 2018, Plaintiff issued a cease and desist letter to
21 Defendant Tang with respect to his violation of the Agreement's non-compete provisions.

22 40. Plaintiff again issued another cease and desist letter to Defendant Tang on August
23 28, 2018.

24 41. On August 31, 2018, Defendant Tang, through counsel, responded to Plaintiff's
25 cease and desist letters denying all the allegations against him contained in said letters.

PLAINTIFF'S FIRST CAUSE OF ACTION
BREACH OF CONTRACT

42. Plaintiff repeats, realleges and incorporates herein each and every allegation set forth in all previous paragraphs of its Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

43. Pursuant to the terms of the Agreement, provision 2.8.1 prohibits Defendant Tang from directly or indirectly providing anesthesiology and/or pain management services, including consultation, management and/or administrative services related thereto, at any of the facilities at which he provided such services during his employment with Plaintiff.

44. Defendant Tang breached the Agreement with Plaintiff after his employment by performing anesthesia services, at minimum at Southern Hills Hospital and St. Rose Dominican Hospital- San Martin Campus, and perhaps other facilities, and actively contacts third-party physicians whom Plaintiff by and through its employees has long-standing professional relationships to provide anesthesia services.

45. As a direct, proximate, and foreseeable result of Defendant Tang's breach of the Agreement, Plaintiff has suffered general and special damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), including prejudgment interest, the exact amount to be proven at trial.

46. Plaintiff has been required to retain the services of an attorney to prosecute its claim against Defendant Tang and his alter ego Sun Anesthesia Solutions and is entitled to reasonable attorney's fees and costs of suit incurred herein.

PLAINTIFF'S SECOND CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

47. Plaintiff repeats, realleges and incorporates herein each and every allegation set forth in all previous paragraphs of its Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

JOHN H. COTTON & ASSOCIATES
7900 W. Sahara Avenue, Las Vegas, Nevada 89117
Telephone: (702) 832-5909 | Facsimile: (702) 832-5910

1 48. There is an implied covenant of good faith and fair dealing in every contract.

2 49. Defendant Tang breached the implied covenant of good faith and fair dealing by
3 initially accepting the Agreement and non-compete provision therein, and then, after his
4 employment, by performing anesthesia services, at Southern Hills Hospital and St. Rose
5 Dominican Hospital- San Martin Campus and perhaps other facilities, and actively contacting
6 third-party physicians whom Plaintiff's anesthesiologist employees have long-standing
7 professional relationships with to provide anesthesia services in direct violation of the non-
8 compete provision.

9 50. As a direct, proximate, and foreseeable result of Defendant Tang's and/or his alter
10 ego Sun Anesthesia Solutions' breach of the implied covenant of good faith and fair dealing,
11 Plaintiff has suffered general and special damages in an amount in excess of Fifteen Thousand
12 Dollars (\$15,000.00), including prejudgment interest, the exact amount to be proven at trial.

13 51. Plaintiff has been required to retain the services of an attorney to prosecute its
14 claim against Defendant Tang and his alter ego Sun Anesthesia Solutions and is entitled to
15 reasonable attorney's fees and costs of suit incurred herein.

16 **PLAINTIFF'S THIRD CAUSE OF ACTION**
17 **UNJUST ENRICHMENT**

18 52. Plaintiff repeats, realleges and incorporates herein each and every allegation set
19 forth in all previous paragraphs of its Complaint, as well as each and every allegation contained
20 in every other Claim for Relief, as if fully set forth herein.

21 53. Plaintiff's employees have spent years and significant money developing client
22 relations with third-party facilities, third-party physicians, and third-party physician groups in the
23 Las Vegas medical community.
24
25

1 54. Plaintiff's relations with such facilities, physicians, and physician groups in the
2 Las Vegas medical community is an asset of significant value to Plaintiff and to any other person
3 or entity engaging in a business similar to Plaintiff.

4 55. Defendant Tang has actively contacted third-party physicians and physician
5 groups whom Plaintiff's employees have long-standing professional relationships with and this
6 was done without Plaintiff's permission or prior knowledge.

7 56. Defendant Tang and/or his alter ego Sun Anesthesia Solutions has been unjustly
8 enriched by the wrongful acts described above.

9 57. As a direct, proximate, and foreseeable result of Defendant Tang's and/or his alter
10 ego Sun Anesthesia Solutions' unjust enrichment, Plaintiff has suffered general and special
11 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), including
12 prejudgment interest, the exact amount to be proven at trial.

13 58. Plaintiff has been required to retain the services of an attorney to prosecute its
14 claim against Defendant Tang and Sun Anesthesia Solutions and is entitled to reasonable
15 attorney's fees and costs of suit incurred herein.

16 **PLAINTIFF'S FOURTH CAUSE OF ACTION**
17 **TORTIOUS INTERFERENCE OF CONTRACTUAL RELATIONS**

18 59. Plaintiff repeats, realleges and incorporates herein each and every allegation set
19 forth in all previous paragraphs of its Complaint, as well as each and every allegation contained
20 in every other Claim for Relief, as if fully set forth herein.

21 60. Plaintiff has an actual non-compete agreement with Defendant Tang.

22 61. Defendant Tang was aware of the non-compete agreement as reflected in his
23 request to have the non-compete agreement waived or made void.

24 62. Plaintiff has a business relationship with facilities and physicians in the Las Vegas
25 medical community.

1 63. Defendant Tang intentionally, improperly and without privilege, interfered with
2 the prospective economic advantage between Plaintiff and the facilities, physicians, and
3 physician groups in the Las Vegas medical community with which it has a business relationship
4 by actively contacting them to perform medical services. This caused the perspective business
5 advantage Plaintiff had with these facilities and physicians to be tampered with and disrupted.

6 64. As a direct, proximate, and foreseeable result of Defendant Tang's and/or Sun
7 Anesthesia Solutions' tortious interference, Plaintiff has suffered general and special damages in
8 an amount in excess of Fifteen Thousand Dollars (\$15,000.00), including prejudgment interest,
9 the exact amount to be proven at trial.

10 65. Plaintiff has been required to retain the services of an attorney to prosecute its
11 claim against Defendant Tang and Sun Anesthesia Solutions is entitled to reasonable attorney's
12 fees and costs of suit incurred herein.

13 **PLAINTIFF'S FIFTH CAUSE OF ACTION**
14 **INJUNCTIVE RELIEF**

15 66. Plaintiff repeats, realleges and incorporates herein each and every allegation set
16 forth in all previous paragraphs of its Complaint, as well as each and every allegation contained
17 in every other Claim for Relief, as if fully set forth herein.

18 67. Plaintiff has an interest in protecting its business relationships with facilities,
19 physicians, and physician groups in the Las Vegas medical community.

20 68. In an effort to protect its economic interests and proprietary matters related to its
21 business, Plaintiff mandates that its employees execute the non-disclosure agreement upon
22 commencement of their employment.

23 69. Defendant Tang executed such a non-compete agreement willingly, knowingly,
24 voluntarily and without duress.

25 70. Defendant Tang breached this agreement and continues to breach it.

1 71. Plaintiff is entitled to an injunction precluding Defendant Tang and his alter ego
2 Sun Anesthesia Solutions from further breaching the terms of the agreement.

3 72. Defendant Tang expressly agreed to such an injunction per section 2.8.3 of the
4 Agreement:

5 Physician agrees that if any restriction contained in this Section 2.8 is held by any
6 court to be unenforceable or unreasonable, a lesser restriction shall be severable
7 therefrom and may be enforced in its place and the remaining restrictions
8 contained herein shall be enforced independently of each other. In the event of
9 any breach by Physician of the provisions of this Section 2.8, the Practice would
10 be irreparably harmed by such a breach, and Physician agrees that the Practice
11 shall be entitled to injunctive relief to prevent further breaches of the provisions
12 of this Section 2.8, without need for the posting of a bond.

13 73. Plaintiff will suffer irreparable harm by Defendant Tang's and/or his alter ego Sun
14 Anesthesia Solutions' continual breaches of the non-compete agreement if the relief requested by
15 Plaintiff is not granted.

16 74. Defendant Tang will not be burdened by complying with the terms of the
17 agreement to which he previously agreed to abide.

18 75. Plaintiff requests injunctive relief in the form of an order precluding Defendant
19 Tang and/or Sun Anesthesia Solutions from further breaching the terms of the agreement.

20 76. Plaintiff has been required to retain the services of an attorney to prosecute its
21 claim against Defendant Tang and Sun Anesthesia Solutions is entitled to reasonable attorney's
22 fees and costs of suit incurred herein.

23 **PLAINTIFF'S SIXTH CAUSE OF ACTION**
24 **DECLARATORY RELIEF**

25 77. Plaintiff repeats, realleges and incorporates herein each and every allegation set
forth in all previous paragraphs of its Complaint, as well as each and every allegation contained
in every other Claim for Relief, as if fully set forth herein.

JOHN H. COTTON & ASSOCIATES
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Telephone: (702) 832-5909 | Facsimile: (702) 832-5910

79. Plaintiff herein asserts that the aforementioned Agreement is a valid contract under NRS 613.200(4) that Defendant Tang has breached as alleged above.

81. Plaintiff has been required to retain the services of an attorney to prosecute its claim against Defendant Tang and Sun Anesthesia Solutions and is entitled to reasonable attorney's fees and costs of suit incurred herein.

PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff, while expressly reserving its right to amend this Complaint up
19 to and including the time of trial to include additional defendants, additional theories of recovery,
20 and items of damages not yet ascertained, demands judgment against Defendants as follows:

JOHN H. COTTON & ASSOCIATES
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Telephone: (702) 832-5909 | Facsimile: (702) 832-5910

6. For pre and post-judgment interest;
7. For reasonable attorney's fees and costs of suit; and
8. For such other and further relief as to the Court deems to be just and appropriate.

Dated this 18th day of October 2018.

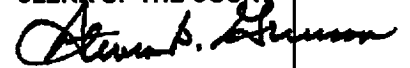
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

/s/ Adam Schneider

JOHN H. COTTON, ESQ.

ADAM A. SCHNEIDER, ESQ.

Attorneys for Plaintiff



NEO
Martin A. Little, (#7067)
Ryan T. O'Malley (#12461)
Howard & Howard Attorneys PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
E-Mail: mal@h2law.com; rto@h2law.com
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:

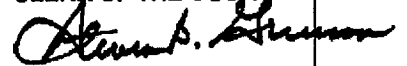
John H. Cotton (#5268)
Adam Schneider (#10216)
JOHN H. COTTON & ASSOCIATES
7900 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 832-5909
Facsimile: (702) 832-5910
Attorneys for Plaintiff

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

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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,

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

**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)
 Gabriel A. Blumberg (#12332)
 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.

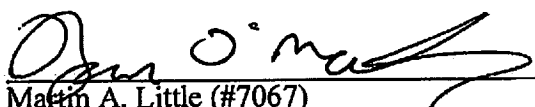
IT IS SO ORDERED.

DATED this 31 day of January, 2019.


HONORABLE TIMOTHY C. WILLIAMS *II*

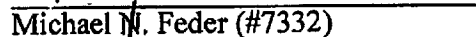
Respectfully submitted by:

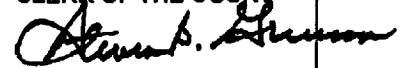
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Attorneys for Defendants

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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,

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

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

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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)
Gabriel A. Blumberg (#12332)
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.

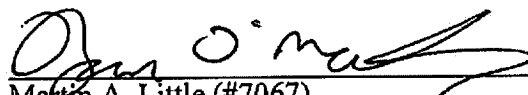
IT IS SO ORDERED.

DATED this 31 day of January, 2019.


HONORABLE TIMOTHY C. WILLIAMS c II

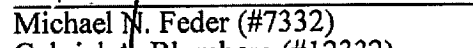
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Attorneys for Plaintiff

4837-9976-4613, v. 4