

Cause No. 2019-421-B

ZEID WOMEN’S HEALTH CENTER, LTD., <i>Plaintiff,</i>	§	IN THE DISTRICT COURT
	§	
	§	
	§	
v.	§	124th JUDICIAL DISTRICT
	§	
SPECIAL HEALTH RESOURCES FOR TEXAS, INC. d/b/a “Woman and Child Health Center of Longview,” MARY BETH SMITH, SHELI KIPP, RIKKI SANDVIK, TAMARA LITTLE, ESTELA TORRES, BLANCA FOSTER and LINDA BOGGS	§	
	§	
	§	
v.	§	
	§	
PYRAMID MEDICAL MANAGEMENT SERVICES, L.L.C.	§	GREGG COUNTY, TEXAS

**ORDER GRANTING TEMPORARY INJUNCTION AS TO
FOSTER, BOGGS, and SPECIAL HEALTH RESOURCES FOR TEXAS, INC.**

On this day came to be considered the Plaintiff’s Application for Temporary Injunctive Relief related to the covenant not to compete signed by defendants, Blanca Foster and Linda Boggs, as well as Plaintiff’s Application for Temporary Injunctive Relief against Defendant Special Heath Resources for Texas, Inc. d/b/a “Woman and Child Health Center of Longview” (collectively “Defendants”).

The Court, having considered the request for injunctive relief and supporting and opposing briefing and applicable law cited therein, evidence admitted for consideration, arguments of counsel, the pleadings on file in this case is of the opinion Plaintiff’s application for a Temporary Injunction should be GRANTED.

It is therefore ORDERED that, between now and entry of final judgment in this case, the below listed Defendants, and their agents, servants, employees, representatives, and all persons or

entities of any type whatsoever acting in concert with them or acting on their behalf are enjoined from the following acts:

1. Defendant BLANCA FOSTER will desist and refrain from:
 - a. Providing women's health services, directly or indirectly, for SPECIAL HEALTH RESOURCES FOR TEXAS, INC. D/B/A "WOMAN AND CHILD HEALTH CENTER OF LONGVIEW" in conjunction with others employed by or affiliated with Family Circle of Care, Wellness Pointe, Diagnostic Clinic of Longview, or Trinity Clinic, within a twenty (20) mile radius of Zeid Women's Health Center, LTD's Longview, Texas location.

2. Defendant LINDA BOGGS will desist and refrain from:
 - a. Providing women's health services, directly or indirectly, for SPECIAL HEALTH RESOURCES FOR TEXAS, INC. D/B/A "WOMAN AND CHILD HEALTH CENTER OF LONGVIEW" in conjunction with others employed by or affiliated with Family Circle of Care, Wellness Pointe, Diagnostic Clinic of Longview, or Trinity Clinic, within a twenty (20) mile radius of Zeid Women's Health Center, LTD's Longview, Texas location.

3. Defendant, SPECIAL HEALTH RESOURCES, will desist and refrain from:
 - a. Employing, enabling or facilitating the employment of MARY BETH SMITH, SHELI KIPP, RIKKI SANDVIK, TAMARA LITTLE, ESTELA TORRES, BLANCA FOSTER and LINDA BOGGS for the provision of women's health services, directly or indirectly, actively or silently in conjunction with others employed by or affiliated with Family Circle of Care, Wellness Pointe, Diagnostic Clinic of Longview, or Trinity Clinic, within a twenty (20) mile radius of Zeid Women's Health Center, LTD's Longview, Texas location.

The Court further finds from the facts and evidence set forth in the Plaintiff's Application and evidence admitted for consideration at the hearing on this matter, that unless said Defendants are immediately enjoined as described above, Plaintiff will suffer immediate and irreparable harm, for which there is no adequate remedy at law, and that injunctive relief is warranted in the case. Specifically, the court finds:

- a. ZEID entered into multiple valid and enforceable contracts of employment ("AGREEMENT(S)") with the following individuals, effective on the following dates:
 - BLANCA FOSTER – Nurse Practitioner – March 1, 2018
 - LINDA BOGGS – Nurse Practitioner – March 1, 2018
- b. Each AGREEMENT contains: (A) an exclusivity of employment provision (§1.c); (B) a term provision (§4.a); (C) a ninety (90) day written notice of termination provision (§4.b.); in addition to compensation, the Agreement provides consideration in the form of "Vacation" (§3.a.) and "Professional Leave Time" (§3.b.) ; (D) a covenant not to compete; (E) an acknowledgment of receipt of training, confidential information and trade secrets of ZEID as consideration for the covenant not to compete (§5.a.); and (F) an agreement to maintain confidentiality of the following types of confidential information including but not limited to: employer financial information, marketing, development and demographic information; patient, customer and supplier lists and related information; patient medical records and other patient clinical data; past and present methods, procedures and techniques used in conducting and enhancing operations (§6.a).

The term of each AGREEMENT is for a period of one (1) year from the effective date with automatic renewal unless terminated per the terms of the agreement.

- c. The “exclusivity” provision under paragraph 1(c) of the AGREEMENT states: “Employee agrees to devote Employee’s entire professional time and best efforts in the performance of Employee’s duties...for ZEID WOMEN’S HEALTH CENTER, LTD. Employee shall not...directly or indirectly, engage in any professional business activity related to the practice of obstetrics/gynecology (“OB/GYN”) outside auspices of ZEID WOMEN’S HEALTH CENTER, LTD.” (§1.c.).
- d. The “Term” provision under paragraph 4 of the AGREEMENT states: “This Agreement shall be effective as of March 1, 2018, for an initial twelve (12) month term (the “Initial Term”) unless terminated earlier in accordance with this Agreement. Thereafter, this Agreement shall renew automatically for successive terms of one (1) year under the same terms and conditions, or unless sooner terminated as set forth in this Agreement.” (§4.a.).
- e. The relevant termination provision under paragraph 4 of the AGREEMENT states: “After the initial probation period (as set forth below), either party may terminate this Agreement upon ninety (90) days’ written notice to the other party for any reason whatsoever.” (§4.b.).
- f. The “Covenant Not to Compete” section under paragraph 5 of the AGREEMENT states in pertinent part: “Employee will not engage in providing womens’ health services (including OB/GYN services), either directly or indirectly. . . in conjunction with others . . . (i) for a period of (1) year from such expiration or the

effective date of such termination of this Agreement, as the case may be, (ii) at Family Circle of Care, Wellness Pointe, Diagnostic Clinic of Longview, Trinity Clinic...; within a twenty (20) mile radius of Employee's primary clinic location..." (See for example Zeid Declaration, Exhibit A1, ¶5.a.). The express language of the "Covenant Not to Compete" is to prohibit employees whom ZEID has invested training, services, trade secrets and confidential information from engaging in providing womens' health services directly or indirectly, actively or silently, under contract or otherwise, whether or not for compensation, as an employee, owner, independent contractor, partner, agent, stockholder, director or otherwise, in conjunction with others nor in employee's own account for a period of one (1) year with respect to the following clinics: Diagnostic Clinic of Longview, Trinity Clinic or any of their successors or assigns. This expressly agreed to restriction on employment is limited geographically to a twenty (20) mile radius of ZEID's primary clinic location in Longview, Texas.

- g. The Employment Agreement contains mutual non-illusory promises between ZEID and the employee. For example, ZEID promised to provide and did provide training, services, trade secrets and confidential information of ZEID in exchange for a promise from FOSTER and BOGGS to agree to the "Covenant Not to Compete."
- h. The AGREEMENT further states:
 - o "Employee has carefully read and considered all provisions of this Article 5, and, having done so, agrees that the restrictions set forth in this Article 5, including but not limited to, the time period of the restriction, and the

geographical areas of restriction set forth in this paragraph 5.a., are fair and reasonable and are reasonably required for the protection of the interests of ZEID and its officers, directors, and other employees. In the event that notwithstanding the foregoing, a judicial determination is made that any provision of this Article 5 constitutes an unreasonable or otherwise unenforceable restriction against Employee, the parties hereby agree that such provision shall be void only to the extent that such provision is found by the court to be unreasonable or otherwise unenforceable, and such provision may be modified by the court to the extent necessary to make such provisions enforceable.” (§5.f.);

- “If Employee breaches any of the prohibitions of this covenant not to compete, then in that event, the time period during which such prohibitions apply shall commence to run not on the termination of Employee’s employment, but on the first day after any and all violations by Employee of this Article 5 finally cease;” (§5.e.);
- “In addition to any rights or remedies available to ZEID for breach of any prohibition contained in this covenant not to compete, ZEID shall be entitled to enforcement by any remedy of injunction or ancillary relief as well as for damages...” (§5.e.);
- “Employee further agrees to waive any bond for the enforcement of this covenant not to compete through temporary restraining order, injunction, or other equitable relief.” (§5.e.);
- “**Confidential Information**. Employee acknowledges and agrees that in

connection with the provision of the Women's Health Services (including OB/GYN services) under this Agreement, Employee will have access to, use, and in her capacity as an employee of the Employer, benefit from, certain confidential, proprietary and trade secret materials and information of the Employer, and that such information is important, material and gravely affects the effective and successful conduct of the business and goodwill of the Employer. Such information may include, without limitation, Employer financial information; marketing, development, and demographic information; patient, customer and supplier lists and related information; patient medical records and other patient clinical data; pricing information and fee schedules; business plans, projections and strategies; contracting and managed care strategies and information; past and present methods, procedures and techniques used in conducting and enhancing operations; salary, compensation, and personnel information; compilations of records, information and processes, and other materials, records and/or information of a proprietary nature (collectively, "Confidential Information") (§6.b.);

- "Employee acknowledges and agrees that the disclosure of Confidential Information to other persons, including, in particular but without limitation, any person engaging in a business in any way competitive with the Employer, would result in hardship, loss, irreparable injury and damage to the Employer and that the Employer has a legitimate interest in protecting the Confidential Information and its goodwill. Without limiting other possible remedies for the breach of this covenant, the Parties agree that injunctive or other equitable relief

shall be available to enforce this covenant, without the necessity of posting a bond.” (§6.b.).

- **“No waiver.** Waiver by either party of a breach violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement shall be considered waived by either party except when such waiver is given in writing.” (§7.j.).
- i. SPECIAL HEALTH RESOURCES FOR TEXAS, INC. d/b/a “Woman and Child Health Center (“SHRT”), is a Federally Qualified Health Center (“FQHC”), which qualifies for federal funding for enhanced reimbursement from Medicare and Medicaid. ZEID and SHRT maintained an agreement for the provision of professional health services to patients under the Public Health Services Act (“PHSA”) [42 U.S.C. 254(c)]. Beginning in April of 2016, ZEID coordinated with SHRT to provide professional health services to patients qualified under the PHSA. These services were provided in Longview at 402 N 7th Street, Longview, Gregg County, Texas; and 705 East Marshall Ave., Suite 3000, Longview, Texas. The enforcement of the covenant not to compete does not arise out of, nor is it subject to any provision of the agreement between SHRT and ZEID. (*See*, Zeid Declaration, ¶12).
- j. On January 15, 2018, FOSTER provided a written notice of “resignation” of employment from ZEID. On March 4, 2018, BOGGS provided a written notice of “resignation” of employment from ZEID. Each notice stated the resignation from employment would be effective 30 days from the date of the notice. This “notice”

of resignation had the effect of terminating each employee's employment with ZEID, and failed to comply with the terms of the Agreement to provide ninety (90) days written notice.

- k. ZEID accepted the resignations of FOSTER and BOGGS. With respect to the resignation of FOSTER, the failure of ZEID to pay a bonus to FOSTER following her resignation was not a material breach of the employment agreement.
- l. The likely impact of the conduct of FOSTER and BOGGS in violation of the AGREEMENT has been immediate, harmful and irreparable. Following the departure of SMITH, KIPP and SANDVIK, other employees were solicited by SMITH, KIPP and SANDVIK and are now employed by SHRT, including LITTLE and TORRES. In addition to the above, FOSTER and BOGGS are also employed by SHRT. In total, including SMITH, KIPP, SANDVIK, and LITTLE eleven (11) employees departed ZEID employment for SHRT. Further, ZEID has likely suffered and will continue suffer economic harm. Dr. Yasser Zeid testified that ZEID has suffered a reduction in clinical patient volume of a significant percentage, roughly twenty-five to thirty percent, as well as harm to goodwill established by ZEID in its local location as a result of patient confusion and frustration over rescheduling, the diversion of patients to SHRT, and/or the publicity posted by certain defendants on social media as referenced below.
- m. The departure from ZEID of this number of employees in such a short period of time has likely caused a major disruption in the provision of professional health services to patients of ZEID. In addition to the solicitation of employees, Facebook posts demonstrate likely harm from the violation of the restrictive covenant not to

compete between ZEID and SMITH, KIPP, SANDVIK, LITTLE, TORRES, FOSTER and BOGGS. [(Zeid Declaration, Exhibit C2 – Comments to February 25, 2019 Sheli Kipp Facebook Post)(“I guess I better tell all my friends now you moved;” Exhibit C3 – “I just confirmed my appointment with you at your new location after your message so I’ll see ya!;” “So you’re saying I need to call my Insurance and change my Women’s health provider?”)]. This same day, SMITH, KIPP and SANDVIK began seeing patients formerly treated at ZEID at SHRT’s location on 7th Street. (*See*, Zeid Declaration, ¶16).

- n. The same week in which employees and patients of ZEID were solicited, the signage on the SHRT building located at 402 N 7th Street was changed to remove “in collaboration with Zeid Women’s Health Center.” (*See*, Zeid Declaration, Exhibit D1 and D2).
- o. SMITH, KIPP, SANDVIK, LITTLE, TORRES , FOSTER and BOGGS are engaging in providing women’s health services directly or indirectly, actively or silently, under contract or otherwise, whether or not for compensation, as an employee, owner, independent contractor, partner, agent, stockholder, director or otherwise, in conjunction with Diagnostic Clinic of Longview and Trinity Clinic, as well as on behalf of SMITH, KIPP, SANDVIK, LITTLE, TORRES, FOSTER, BOGGS and SHRT. This conduct is likely in breach of the “Covenant Not to Compete” contained in the Agreement between the employees and ZEID.

The conduct of SMITH, KIPP, SANDVIK, LITTLE, TORRES, FOSTER and BOGGS recited above and in the Order of this Court dated April 4, 2019, has likely caused and continues to cause immediate and irreparable harm to ZEID in that current patients of Zeid have been

diverted from ZEID and are being provided healthcare by these former employees in violation of the “Covenant not to Compete.”

It further appears from the facts and evidence set forth in the Application and evidence admitted for consideration at the hearings on this matter of which the Court has taken judicial notice, that Zeid has a probable right to the relief sought, that a temporary injunction prohibiting Defendants from the above described acts is reasonable under the circumstances, and that Plaintiff will suffer immediate and irreparable injury, loss and damage should this injunction not be in place.

IT IS FURTHER ORDERED that the Clerk of the Court shall forthwith issue a writ of Temporary Injunction in conformity with the law and terms of this Order, Zeid has previously executed and filed with the Clerk of Court a bond in conformity with the law in the amount of \$2500.00, which is deemed sufficient. Once effective, this Order shall remain in full force and effect until a final Judgment in the trial of this matter.

The Court has previously ORDERED a final trial in this matter to begin on May 11, 2020 at 9 a.m.

SIGNED on May 28, 2019.



Judge Presiding

Approved as to form only:

FOR PLAINTIFF:

/s/ Gregory P. Love
Gregory P. Love
State Bar No. 24013060
P. O. Box 948
Henderson TX 75652
Tel: (903) 212-4444
Fax: (903) 392-2267
greg@lovetrialfirm.com

**FOR SPECIAL HEALTH
RESOURCES FOR TEXAS, INC.,
d/b/a Woman and Child Health
Center of Longview:**

/s/ Phillip D. Sharp

Phillip D. Sharp

State Bar No. 18118680

Kimberly A Chojnacki

Texas Bar No. 24068696

BAKER, DONELSON,

BEARMAN, CALDWELL &

BERKOWITZ, PC

1301 McKinney, Suite 3700

Houston, Texas 77010

Tel: (713) 650-9700

Fax: (713) 650-9701