STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

KIDNEY CONSULTANTS OF MICHIGAN, PC,
a Michigan professional corporation,

Plaintiff,

vs. Case No. 2024-000048-CB

HILANA KAAFARANI, M.D., and BETA MEDICAL PRACTICE PLLC, a Michigan professional limited company d/b/a BETA KIDNEY CARE,

Defendant.

CONSOLIDATED WITH

KIDNEY CONSULTANTS OF MICHIGAN, PC,
a Michigan professional corporation,

vs. Case No. 2023-004421-CB

MARROUF AZAR, M.D.

Defendant.
_____/

OPINION AND ORDER

This matter is before the Court on Plaintiff Kidney Consultants of Michigan's ("KCM") motion for preliminary injunction in Case No. 2024-000048-CB.

I. Background

Defendant Dr. Hilana Kaafarani, M.D., is a nephrologist. She was hired as an employee by KCM on June 1, 2019, and at that time executed an Employment Agreement. The Employment Agreement had a term of two years and contained the following non-compete and non-solicitation provisions:

> (a) Physician covenants, agrees and warrants that during any term of this Agreement and for a two (2) year period after any termination of employment, Physician shall not, directly or indirectly, assist or become

> involved in any activities or otherwise engage in the practice of medicine in any capacity, including but not limited to as a physician, employee, manager, entrepreneur, investor, consultant, owner, officer, director, or in any other capacity, which are competitive with any activity of the Corporation, within a five (5) mile radius of the Office location(s) of the Corporation at which Physician provided professional services to patients, without the prior written consent of the Corporation. Further, notwithstanding the foregoing, for a two (2) year period after any termination of employment Physician shall not work as a physician in any capacity within the specialty of nephrology and/or provide nephrology services at any Facility for which Physician provided services while employed by Corporation.
>
> (b) During any term of this Agreement and after any termination of employment, Physician shall not solicit, directly, or indirectly, or contact in any manner or any form (i) any of the Corporation's patients, referral sources or Facilities with which Corporation contracts or does business, for any purpose or (ii) any of Corporation's employees and/or contractors in order to induce such employee or contractor to cease employment or engagement with the Corporation.

(1st AM Compl., Ex. 1, ¶13(a) and (b).) On June 1, 2021, Dr. Kaafarani became a shareholder of KCM by executing a Shareholder Agreement.

On December 15, 2023, Dr. Kaafarani notified KCM she was resigning from KCM effective December 31, 2023. On January 1, 2024, Dr. Kaafarani began operating her own nephrology practice, Beta Medical Practice ("Beta Medical"). According to KCM, Dr. Kaafarani's new practice is located less than two miles from KCM's main office and Dr. Kaafarani continues seeing patients at certain hospitals and dialysis centers in violation of the non-compete provision. It also alleges Dr. Kaafarani improperly solicited KCM's patients before and after she left KCM, and she improperly used KCM's confidential information related to KCM patients.[1]

[1] KCM's motion did not provide substantive arguments regarding Dr. Kaafarani's alleged breach of the confidentiality provision in the Employment Agreement. Consequently, the Court will not address that allegation.

On January 5, 2024, KCM filed suit against Dr. Kaafarani;[2] filed a first amended complaint on January 10, 2024, asserting six claims against: breach of employee duty of loyalty (Count I); breach of fiduciary duty (Count II); breach of the Employment Agreement (Count III); misappropriation of trade secrets (Count IV); tortious interference with business relationships (Count V); and injunctive relief (Count VI).

KCM moved for a temporary restraining order and a preliminary injunction barring Dr. Kaafarani from practicing medicine in violation of the restrictions in the Employment Agreement for two years, from soliciting or contacting KCM's patients, from interfering with KCM's access to and care of its patients, and from using or disclosing any of KCM's confidential information. It also requested the Court order Dr. Kaafarani to return all KCM's confidential information, including a list of all patients she contacted regarding her change of employment. On January 9, 2024, the Court rejected KCM's motion for a temporary restraining order and scheduled an evidentiary hearing for its preliminary injunction request. The evidentiary hearing for the preliminary injunction was held on February 2, 2024, and April 5, 2024, and the Court took the matter under advisement.

II. Standard of Review

Injunctive relief is an extraordinary remedy. *Acer Paradise v Kalkaska County Rd Comm'n*, 262 Mich App 193; 684 NW2d 903 (2004). In determining whether to issue a preliminary injunction, a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger the party seeking the injunction will

[2] KCM filed suit against another of its former employees and shareholders, Dr. Marrouf Azar, M.D., in Case No. 2023-004421-CB. The Court consolidated the two cases on March 11, 2024. This issues in Dr. Azar's case are immaterial to resolution of KCM's motion for preliminary injunction against Dr. Kaafarani.

suffer irreparable harm if the injunction is not issued, (3) the risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. *Campau v McMath*, 185 Mich App 724, 729; 463 NW2d 186 (1990). Whether to grant injunctive relief is a discretionary decision of the circuit court. *Farmington v Scott*, 374 Mich 536, 540; 132 NW2d 607 (1965). The moving party has the burden to establish a preliminary injunction should be granted. MCR 3.310(A)(4).

III. Law and Analysis

A. Likelihood of Success on the Merits

1. Breach of the Employment Agreement

"A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Const, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014).

KCM argues it has a substantial likelihood of success on the merits of its claim that Dr. Kaafarani breached the Employment Agreement because there is no dispute, she Defendant started her own nephrology practice approximately 2 miles from KCM's main office, she is seeing patients that were patients of KCM, and she is seeing patients at facilities KCM operated at while she was an employee. They also contend there is no dispute she solicited KCM's patients before and after she left KCM. In response, Dr. Kaafarani has not disputed she breached the Employment Agreement's non-compete and non-solicitation provisions. Instead, she asserts the Employment Agreement was superseded by the later-executed Shareholder Agreement. She further argues that as to

the non-compete provision, its geographic scope is unreasonable. As for the non-solicitation provision, she contends she had an ethical duty to communicate with her patients from KCM to inform them she was leaving and provide her new location.

Under the non-compete provision in the Employment Agreement, Dr. Kaafarani was prohibited for two-years after any termination of her employment from "engag[ing] in the practice of medicine in any capacity . . . which [is] competitive with any activity of [KCM] within a five (5) mile radius of the Office location(s) of the [KCM] at which Physician provided professional services to patients." (First AM Compl., Ex. 1, ¶13(a).) It also prohibited her for a period of two-years after termination from "work[ing] as a physician in any capacity within the specialty of nephrology . . . at any Facility for which Physician provided services while employed by Corporation." (Id.) As noted, Dr. Kaafarani does not dispute she breached these restrictions. Indeed, the evidence and testimony during the evidentiary hearing established as much. Dr Abdul Effendi, President of KCM, testified that Dr. Kaafarani's new practice, which opened less than two years after her December 31, 2023, termination, is less than five miles from KCM's main office in Roseville and that KCM has lost patients to Dr. Kaafarani's new practice. And a nurse practitioner with KCM testified that Dr. Kaafarani is seeing KCM's patients at the dialysis center in Harper Woods. In her testimony, Dr. Kaafarani never disputed that her new office was within 5 miles of KCM's main office or that she was seeing patients at the same dialysis facilities she was seeing patients at when employed with KCM. In fact, she testified that over 30 of KCM's dialysis patients are currently under her care.

The non-solicitation provision in the Employment Agreement bars Dr. Kaafarani from "solicit[ing], directly, or indirectly, or contact[ing] in any manner or any form . . . any

of [KCM's] patients, referral sources or Facilities with which [KCM] contracts or does business, for any purpose." (1st AM Compl., Ex. A, ¶13(b).) Dr. Kaafarani does not dispute that after she left KCM she communicated with patients that were under her care while she was employed by KCM, nor does she dispute that in those communications she provided her new office location. She argues, instead, that she had an ethical duty to communicate with them and inform them that she had left KCM and to provide them with her new practice information because KCM had failed to do so. However, she has not identified any legal authority that establishes such an ethical obligation and that that obligation trumps a non-solicitation provision in a physician's employment contract. See *Thomas v McPherson Cmty Health Ctr*, 155 Mich App 700, 710; 400 NW2d 629 (1986) ("A party may not leave it to [the courts] to search for authority to sustain or reject its position.") Nor is the Court aware of any such authority. Furthermore, it is clear from the record that Dr. Kaafarani did not communicate or coordinate with KCM to provide her new information to the patients she was treating as was the practice of KCM. Thus, the Court is unpersuaded that Dr. Kaafarani's admitted communications with KCM's patients in violation of the non-solicitation provision were excused.

2. Integration Clause in the Shareholder Agreement

Dr. Kaafarani also argues that KCM is not likely to prevail on its claim that she breached the Employment Agreement because it had terminated by its terms and/or it is superseded by the later-executed Shareholder Agreement. The primary goal in construing or interpreting contracts is to honor the parties' intent. *UAW-GM Human Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The parties' intent is determined "by interpreting the language of the contract according to its plain

and ordinary meaning." *Bank of America v First American Title Ins.*, 499 Mich 74, 85-86; 878 NW2d 816 (2016). "When contract language is clear, unambiguous, and has a definite meaning, courts do not have the ability to write a different contract for the parties, or to consider extrinsic testimony to determine the parties' intent." *Kyocera Corp v Hemlock Semiconductor*, LLC, 313 Mich App 437, 446; 886 NW2d 445 (2015). "A contract is said to be ambiguous when its words may reasonably be understood in different ways." *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). "If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Wells Fa o Bank v Cherryland Mall Ltd. Partnership (On Remand)*, 300 Mich App 361, 386; 835 NW2d 593 (2013).

As an initial matter, Dr. Kaafarani argues that the parties' Employment Agreement, and presumably the non-compete and non-solicitation provisions on which Plaintiff relies, terminated by its terms prior to her departure on December 31, 2023. The term of the agreement was unambiguously 2 years (beginning June 1, 2019). However, the non-compete provision by its clear and unambiguous terms, applied not only during the term of the Employment] Agreement but additionally "*for a two (2) year period after any termination of employment.*" Ex 13(a). Likewise, the non-solicitation applied "during any term of this Agreement and *after any termination of employment*…." *Id.*, §13(b).

Dr. Kaafarani also argues that the parties' Shareholder Agreement superseded the Employment Agreement. In support of her position, Dr. Kaafarani points to two provisions contained in the Shareholder Agreement which state as follows:

> "Any and all previous agreements among the parties, whether oral or written, with respect to the subject matter of this

> Agreement are hereby revoked and superseded by this Agreement." (Resp., Ex. 2, §1.)
>
> "This Agreement, together with any Schedules and/or Exhibits attached hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof into which all negotiations and understandings are merged, and supersedes all other agreements and understandings among the parties, whether written or oral." (Id., §22.)

The language relied on by Dr. Kaafarani states that the Shareholder Agreement is fully integrated "with respect to the subject matter" of the Shareholder Agreement. In other words, the Shareholder Agreement represents the parties' entire agreement as to the subject matter is covers. Further, only previous agreements that cover the same subject matter contained in the Shareholder Agreement are "revoked and superseded".

However, review of the two agreements reveals each agreement governs different subject matter. The Employment Agreement governs Dr. Kaafarani's rights and obligations as an employee of KCM and includes a non-compete and non-solicitation agreement governing obligations during and 2 years following termination of her employment, while the Shareholder Agreement governs her rights and obligations as a shareholder of KCM. There are only two areas where they overlap: compensation, (Compare Resp., Ex. 1, §3 and Ex. 2, §11), and accounts receivable, (Compare id., Ex. 1., §9 and Ex. 2, §12). Importantly, the Shareholder Agreement does not contain any language whatsoever concerning covenants not to compete or solicit like the Employment Agreement. Thus, the Court finds that the integration provisions in the Shareholder Agreement cannot reasonably be interpreted as the parties' agreement to nullify their previously agreed upon covenants not to compete or solicit contained in the Employment Agreement.

3. Reasonableness of the Non-Compete Provision

Dr. Kaafarani also argues that as to the noncompete provision, its 5-mile geographic restriction is unreasonable because it unreasonably restricts a patient's right to choose a physician. Specifically, she contends that if a patient that was seeing her while she was employed by KCM wants to continue seeing her, then the patient may have to travel farther to Dr. Kaafarani's new office, and if it is a dialysis patient, then he or she will have to go to a new dialysis center that may be farther away. This argument is unavailing.

Courts generally presume contracts are legal, valid, and enforceable. Non-compete agreements, however, "are disfavored as restraints on commerce and are enforceable only to the extent they are reasonable." *Coates v Bastian Bros*, 276 Mich App 498, 507; 741 NW2d 539 (2007); see MCL 445.772 ("A contract . . . between 2 or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.") "A court must assess the reasonableness of a noncompetition clause if a party has challenged its enforceability." *Coates*, 276 Mich App at 507–08. The Michigan Antitrust Reform Act, MCL 445.771 et seq., governs noncompete agreements in employment contracts. Specifically, MCL 445.774a sets forth the factors a court must consider in assessing whether a noncompete agreement between an employer and an employee protects an employer's reasonable competitive business interests. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 513; 885 NW2d 861 (2016). A court must consider whether the noncompete agreement "is reasonable as to its duration, geographical area, and the type of employment or line of business." MCL 445.774a(1). "Reasonableness of a noncompete agreement is inherently fact-specific, but . . . is a question of law when the

relevant facts are undisputed." *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016).

The Court of Appeals has held that non-compete agreement between physicians and their employers "can protect against unfair competition by preventing the loss of patients to departing physicians, . . . or protecting an employer's confidential business information or patient lists." *St Clair Med, PC v Borgiel*, 270 Mich App 260, 266–67; 715 NW2d 914 (2006). And it has held that geographical restrictions of seven miles in physician non-compete agreements are reasonable. See *id*. at 269 (finding covenant prohibiting practice of medicine within seven miles of two clinics where former employee-physician saw patients was reasonable).

The non-compete provision here has a general geographic restriction that bars Dr. Kaafarani from practicing nephrology within 5 miles of KCM's "office," which is identified in the Employment Agreement as KCM's office at 25710 Kelly Road in Roseville, Michigan. (1st AM Compl., Ex. A, ¶2(b).) It also contains facility-specific restrictions that prohibit her from providing nephrology services at any facility[3] (i.e., hospital or dialysis center) that she covered while employed with KCM. (Id.) Contrary to the assertion by Dr. Kaafarani's counsel at the evidentiary hearing, nothing in the language of the non-compete provision indicates that the facility-specific restriction includes a five-mile prohibition. In other words, Dr. Kaafarani is not prohibited from providing nephrology

[3] The Employment Agreement identified the following hospitals and dialysis centers as "facilities": "William Beaumont Hospital - Troy, Henry Ford Macomb Hospital, St John Hospital Main, and St John Macomb-Oakland . . . Macomb Regional Dialysis Center, Fresenius FMC units, including but not limited to Shelby Township, Clinton Township, University, St. Clair Shores, Warren, Connor Avenue, Bewick and East Detroit, and DaVita Dialysis Center Macomb in Warren, Michigan." (1st AM Compl., Ex. A, ¶2(b)).

services within 5 miles of one of the facilities she covered while employed by KCM so long as she is more than 5 miles from KCM's office, and she is not providing services at one of the listed facilities.

As to the purpose of the non-compete provision, Dr. Effendi testified that Dr. Kaafarani, as a new physician in the area, would be benefiting from joining a well-established, reputable practice that had a solid referral base from primary care physicians. So, he explained, it would be unacceptable for her to simply leave and take those benefits with her. Dr. Effendi also testified that approximately 80 percent of the referrals to KCM were for him, but because his schedule is generally full, many of those patients would go to the other doctors in the practice, including Dr. Kaafarani.

There is no evidence that either the five-mile restriction or the facility-specific restriction would unreasonably burden a patient's ability to continue receiving care from Dr. Kaafarani if he or she so chooses. So given the narrow geographic scope of the restriction and its limited application to only those facilities where Dr. Kaafarani provided nephrology services while employed by KCM, the Court is satisfied that the geographic scope of the non-compete provision is reasonable in relation to KCM's competitive interest in preventing the loss of patients and in protecting its goodwill. See *St Clair Med*, 270 Mich App at 269.

In sum, there is no dispute Dr. Kaafarani breached the non-compete and non-solicitation provisions in the Employment Agreement, and there is no legal basis to preclude enforcement of the Employment Agreement. Accordingly, the Court finds KCM has established a likelihood of success on its claim that Dr. Kaafarani breached the Employment Agreement.

4. Misappropriation of Trade Secrets

Of KCM's four other claims, the only one it has made more than a cursory argument regarding its likelihood of success on the merits is its misappropriation of trade secrets claim, which is based on Dr. Kaafarani's alleged misappropriation of "confidential information" as that term is defined in the Employment Agreement.[4] In response, Dr. Kaafarani contends KCM has failed to establish the "confidential information" that forms the basis of this claim are valid trade secrets under MUTSA.

The Michigan Uniform Trade Secrets Act (MUTSA) provides a statutory cause of action for the misappropriation of trade secrets. MCL 445.1903. A claim of misappropriation of trade secrets has three elements: "(1) the existence of a trade secret, (2) the defendant's acquisition of the trade secret in confidence, and (3) the defendant's unauthorized use of it." *Stromback v New Line Cinema*, 384 F3d 283, 302 (6th Cir 2004).[5] MUTSA defines "trade secret" to mean:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:
>
> (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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[4] The extent of KCM's arguments on the likelihood of success on its other claims are "Kaafari's actions while working for KCM also breached her duty of loyalty to her employer. Her actions while continuing as shareholder breached her fiduciary duties to KCM." And "Kaafari and Beta Medical knew of KCM's valid relationships with patients and facilities, and have intentionally interfered with and disrupted those relationships." (Pltf.'s Br., p 16.)

[5] "It is appropriate to look to the law of other jurisdictions to interpret [MUTSA]." *Polytorx, LLC v Univ of Michigan Regents*, unpublished opinion of the Court of Appeals, issued May 7, 2015 (Docket No. 318151), p 6; see *Innovation Ventures*, unpub op, p 12.

MCL 445.1902(d). To qualify as a trade secret, the information must "be a secret." *Dura Glob. Techs., Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859 (ED Mich, 2009) quoting *Kubik, Inc v Hull*, 56 Mich App 335, 348; 224 NW2d 80 (1974). The owner of a trade secret must take "sufficient measures . . . to guard the secrecy of the information and preserve its confidentiality." *Kubik*, 56 Mich App at 347-48.

The Employment Agreement defines "confidential information" broadly as "information disclosed to Physician or known by Physician as a consequence of or through Physician's employment with Corporation, including, but not limited to, the names and addresses of the patients, referral sources, and/or facilities listings of [KCM] and other patient records and the names and other contact information." (1st AM Compl., ¶14(a).) However, as Dr. Kaafarani correctly argues, KCM has not provided any evidence or legal authority establishing that the items listed in the Employment Agreement as "confidential information" do in fact derive economic value from generally not being known and are not readily ascertainable by property means. See *Kubik,* 56 Mich App at 348 ("The term 'trade secret' does not encompass information which is readily ascertainable, i.e., capable of being acquired by competitors or the general public without undue difficulty or hardship.") And other the citing to the existence of the confidentiality provision in the Employment Agreement with Dr. Kaafarani, KCM has not provided any evidence that it has taken other steps to guard the secrecy of the information from disclosure by other employees. See *Sulfo Techs., LLC v Schmoyer*, unpublished opinion of the Court of Appeals, issued February 8, 2011 (Docket No. 294246), p 8 (rejecting plaintiff's argument that its information was a trade secret where, other individuals besides defendant were not subject to any confidentiality agreement and were not barred from disclosing the

information); *Sheets v Yamaha Motors Corp, USA,* 849 F2d 179, 183-184 (CA 5, 1988) ("disclosure of a trade secret to others who have no obligation of confidentiality extinguishes the property right in the trade secret"). Accordingly, KCM has failed to demonstrate that the "confidential information" identified in the Employment Agreement constitutes a "trade secrets" for purpose of MUTSA, and therefore, it has failed to establish a likelihood of success on its misappropriation of trade secrets claim.

B. Irreparable Harm

An irreparable harm is "a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998). A party must demonstrate "a particularized showing of irreparable harm" and "[t]he injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief." *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 652; 825 NW2d 616 (2012).

Dr. Effendi testified it is difficult to calculate how much revenue KCM has lost due to Dr. Kaafarani's actions as it does not know many patients KCM lost to Dr. Kaafarani because of how far in advance appointments get scheduled. Additionally, as noted, he testified that the purpose of the non-compete provision was to prevent a Dr. Kaafarani, a new nephrologist in the area, from leaving KCM and unfairly benefiting from KCM's goodwill with its patients.

"A physician who establishes patient contacts and relationships as the result of the goodwill of his employer's medical practice is in a position to unfairly appropriate that goodwill and thus unfairly compete with a former employer upon departure." *St. Clair*

Medical, 270 Mich App at 268. State and federal courts recognize that loss of customer goodwill and fair competition can support a finding of irreparable harm because such losses are difficult to calculate. See e.g., *Slis v State*, 332 Mich App 312, 362; 956 NW2d 569 (2020) ("loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute.") quoting *Basicomputer Corp v Scott*, 973 F2d 507, 512 (CA 6, 1992); *Superior Consulting Co, Inc v Walling*, 851 F Supp 839, 847 (ED Mich, 1994); *Brown Dairy Equip v Lesoski*, unpublished opinion of the Court of Appeals, issued November, 9, 2010 (Docket No. 291372), p 2, (finding, in action for breach of non-compete, employer would likely suffer irreparable harm without injunction because employee had benefited from employer's customer goodwill and allowing the employee to share that goodwill with his new employer would be a loss to plaintiff as it would have given the new employer an unfair business advantage.) *Radio One v Wooten*, 452 F Supp 2d 754 (ED Mich, 2006) (applying Michigan law to enjoin radio personality from violating his non-compete agreement finding irreparable harm based on the loss of customer goodwill and fair competition that would result from breach of non-compete covenant).

Given Dr. Effendi's testimony regarding the difficulty in determining how many patients KCM has lost and the purpose of the non-compete to protect KCM's goodwill and competitiveness, the Court finds KCM would suffer irreparable harm if the injunction is not issued.

C. Balance of Harm

The third factor in determining whether to issue a preliminary injunction is balancing the risk of hardship to the parties if the injunction is granted versus the absence

of an injunction. *Campau*, 185 Mich App at 729; *Superior Consulting*, 851 F Supp at 848. Enforcing the Employment Agreement against Dr. Kaafarani would only limit her ability to practice nephrology within the five-mile radius of KCM's Roseville office and at a handful of hospitals and dialysis centers in the metro Detroit area. Any harm from these restrictions is finite as these restrictions only last for two years and, in the meantime, she remains free to practice outside of the five-mile radius and at any other hospital or dialysis center in the metro Detroit area. See *Superior Consulting*, 851 F Supp at 848. If the injunction is not granted, then KCM would likely suffer irreparable harm to its good will and competitive position for an unknown length of time and at an unknown cost. *Id.* The balance of hardships favors KCM and the issuance of the injunction. See *Brown Dairy*, unpub op at *2 (finding balance of harms this factor favored former employer where its "unlimited potential loss of additional customers to its competitor outweighed [former employee's] three-year preclusion against working for the competitor.")

D. Public Interest

The fourth factor considers "the harm to the public interest if the injunction is issued." *Campau*, 185 Mich App at 729. In the context of an employment noncompete agreement, Michigan courts and the Sixth Circuit have indicated that the public interest factor does not weigh in favor of either side. For example, in *Brown Dairy*, unpub op at 2, the Court of Appeals found that the public interest factor had no bearing in that case seeking an injunction to enforce a noncompete agreement in an employment contract. See also *Certified Restoration Dry Cleaning Network, LLC v Tenke Corp*, 511 F3d 535, 551 (CA 6, 2007) ("No important public policies readily appear to be implicated by the issuance of the preliminary injunction [enforcing a restrictive covenant] other than the

general public interest in the enforcement of voluntarily assumed contract obligations.") Accordingly, the Court finds this factor has no bearing here.

IV. Conclusion

For the reasons set forth above, KCM's motion for preliminary injunction in Case No. 2024-000048-CB is GRANTED. Dr. Kaafarani and Beta Medical are enjoined, whether alone or in concert with others, including any officer, agent, representative, or employee, until further order of this court, from:

1. Directly or indirectly assisting or being involved in any activities or otherwise engaging in the practice of medicine competitive with any activity of KCM, including nephrology, within a 5-mile radius of KCM's office location at 25710 Kelly Road in Roseville, Michigan.

2. Working as a physician in any capacity within the specialty of nephrology or providing nephrology services at any hospital or dialysis center for which Dr. Kaafarani provided services while employed at KCM including, William Beaumont Hospital - Troy, Henry Ford Macomb Hospital, St John Hospital Main, St John Macomb-Oakland, Macomb Regional Dialysis Center, Fresenius FMC units, including Shelby Township, Clinton Township, University, St. Clair Shores, Warren, Connor Avenue, Bewick and East Detroit, and DaVita Dialysis Center Macomb in Warren, Michigan

3. From soliciting or contacting in any manner any of the KCM patients, referral sources, hospitals, or dialysis centers with which KCM contracts or does business for any purpose, including those listed in Paragraph 2 above.

4. From interfering with KCM's access to and provision of care to patients at the hospitals and dialysis centers listed in Paragraph 2 above.

This Opinion and Order neither resolves the last pending claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: 06/25/2024



Kathryn A. Viviano

signed by KATHRYN VIVIANO 06/25/2024 03:37:56 g5SDIpv7

Hon. Kathryn A. Viviano, Circuit Court Judge