

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
Western Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSOCIATION OF FAMILY PRACTICE
RESIDENCY DIRECTORS,

Defendant.

Civil Action No:

96-575-CV-W-2

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint on May 28, 1996, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party regarding any issue of fact or law;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I.

JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states claims upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "AFPRD" means the Association of Family Practice Residency Directors, each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, and employees;

(B) "Contracting with" means to negotiate, offer, accept, execute, or enter into an employment contract or agreement;

(C) "Current family practice residents" means persons already enrolled in, committed to or employed by a family practice or other residency;

(D) "Inducements" means salary, bonuses (signing, retention or other), loan forgiveness or repayment, housing allowance or subsidy, transportation allowance or subsidy, moonlighting payment, permissible moonlighting when on-call, additional payment for required on-call activity, moving expenses, travel expenses, reimbursement for any expense in an amount which exceeds the actual receipted expense and any other employment benefit or incentive;

(E) "The Match" means the annual placement process conducted by the National Resident Matching Program through which medical students and hospital residency programs select and are matched with their preferences;

(F) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity; and

(G) "Prospective family practice residents" means medical students or other candidates for residency in a family practice program.

III.

APPLICABILITY

This Final Judgment applies to AFPRD and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in active concert with defendant.

IV.

PROHIBITED CONDUCT

Defendant is enjoined from:

(A) Directly or indirectly prohibiting or restraining any person offering a family practice residency program from:

(1) competing to attract, obtain or retain the services of current or prospective family practice residents by offering or providing any or differing amounts, types, or combinations of inducements, including inducements offered or provided to current or prospective family practice residents in the same residency year;

(2) offering or providing confidential or non-written terms and conditions of inducements to current or prospective family practice residents;

(3) directly or indirectly soliciting, recruiting or contracting with current family practice residents of other residency programs; and

(4) considering applications submitted by current family practice residents and contracting with those residents without the knowledge or approval of the program director of any other residency program;

(hereinafter "practices identified in Section IV(A)").

(B) Directly or indirectly adopting, disseminating, publishing, or seeking adherence to any code of ethics, rule, bylaw, resolution, policy, guideline, standard, manual, or policy statement that has the purpose or effect of prohibiting or restraining AFPRD members from engaging in any of the practices identified in Section IV(A) above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD.

V.

COMPLIANCE PROGRAM

Defendant is ordered to:

(A) Within sixty (60) days of the date of entry of this Final Judgment, amend its code of ethics, rules, bylaws, resolutions, policies, guidelines, standards, manuals, or policy statements, and specifically those provisions or parts of provisions located at

Sections 2(B), 2(C), 2(E)(1), 2(E)(2), and 2(E)(3) of the "AFPRD Guidelines on the Ethical Recruitment of Family Practice Residents," to comply with Section IV above, and provide a copy of the final amended guidelines to plaintiff;

(B) Send a copy of this Final Judgment, along with a written statement that there are no longer any AFPRD ethical guidelines or rules that state or imply that any of the practices identified in Section IV(A) above are, in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD, regardless of anything defendant may have said about these practices in the past, to each current AFPRD member, within sixty (60) days from the date of entry of this Final Judgment, and thereafter sending annually such written statement to each current AFPRD member for a period of five (5) years after the date of entry of this Final Judgment;

(C) Send a copy of this Final Judgment to each new AFPRD member no later than ten (10) days after membership in the AFPRD is granted, and thereafter annually until five (5) years after the date of entry of this Final Judgment;

(D) Distribute within sixty (60) days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all directors and officers of defendant;

(E) Distribute in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph V(D);

(F) Brief annually in writing or orally those persons designated in Paragraphs V (D) and (E) on the meaning and

requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

(G) Obtain from those persons designated in Paragraphs V (D) and (E) annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported violations, if any, of this Final Judgment of which they are aware to counsel for defendant; and

(H) Maintain for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

VI.

CERTIFICATIONS

(A) Within 75 days after entry of this Final Judgment, defendant shall certify to plaintiff that it has complied with the provisions of Sections V(A)-(B) above, and that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Section V(D); and

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall certify annually to plaintiff whether it has complied with the provisions of Sections V applicable to it.

VII.

PLAINTIFF'S ACCESS

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall on reasonable notice be permitted:

(A) Access during regular business hours of defendant to inspect and copy all records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

(B) To interview officers, directors, employees, and agents of defendant, who may have counsel present, concerning such matters; and

(C) To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

VIII.

JURISDICTION RETAINED

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX.

EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire ten (10) years from the date of entry.

X.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge