

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

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OCT 26 1994

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

UTAH SOCIETY FOR HEALTHCARE
HUMAN RESOURCES ADMINISTRATION;
UTAH HOSPITAL ASSOCIATION;
ST. BENEDICT'S HOSPITAL;
IHC HOSPITALS, INC.;
HOLY CROSS HOSPITAL OF
SALT LAKE CITY;
PIONEER VALLEY HOSPITAL, INC.;
LAKEVIEW HOSPITAL, INC.;
MOUNTAIN VIEW HOSPITAL, INC.;
BRIGHAM CITY COMMUNITY
HOSPITAL, INC.; and
HCA HEALTH SERVICES OF UTAH, INC.
d/b/a ST. MARK'S HOSPITAL,

DEFENDANTS.

OFFICE OF JUDGE
J. THOMAS GREENE

Civil Action No. 94C282G

Entered: September 14, 1994

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
OCT 27 1994
MARKUS B. KIMMER, CLERK
DEPUTY CLERK

FINAL JUDGMENT NUNC PRO TUNC

Plaintiff, United States of America, having filed its
Complaint on ~~February~~ ^{March 14} 1994 and plaintiff and defendants, 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

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any evidence against or an admission by defendants to any such issue;

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, as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1. Jurisdiction is retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such 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.

II.

APPLICABILITY

This Final Judgment applies to each defendant and to each of its trustees, officers, directors, agents, employees, successors, and assigns, and to all other persons in active

concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, except that:

(A) the provisions of Section IV (A)(1) - (3) do not apply to the communications of a nurse employee of any hospital defendant that are exclusively for the purpose of, and are ancillary to, and reasonably necessary for, the seeking or holding of individual employment as a nurse, and

(B) for HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital, the provisions of Sections V, VI, and VII apply only to defendant HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital and to any party who may succeed to the ownership of St. Mark's Hospital.

III.

DEFINITIONS

As used in this Final Judgment:

(A) "Actual pay rate" means the actual pay rate for any employee or class of employees in a specific job being evaluated.

(B) "Average pay rate" means the rate determined by calculating the average pay of all the employees in a specific job being evaluated.

(C) "Compensation" means any component of payment for employee services, including, but not limited to, wages, salaries, benefits, shift differentials, hourly and per diem

rates, hiring formulas, payroll budget information, and the frequency or timing of any of these components of payment.

(D) "Current compensation" means compensation that is actually being utilized in paying any employee.

(E) "Defendants" means St. Benedict's Hospital; IHC Hospitals, Inc., and IHC Hospitals, Inc. d/b/a LDS Hospital, Primary Children's Medical Center, Cottonwood Hospital Medical Center, Alta View Hospital, and Wasatch Canyons Hospital ("IHC"); Holy Cross Hospital of Salt Lake City; Pioneer Valley Hospital, Inc. d/b/a Pioneer Valley Hospital; Lakeview Hospital, Inc. d/b/a Lakeview Hospital; Mountain View Hospital, Inc. d/b/a Mountain View Hospital; Brigham City Community Hospital, Inc. d/b/a Brigham City Community Hospital; and HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital.

(F) "Employee" means any full-time, part-time, hourly or per diem employee.

(G) "Health care facility" means any entity employing nurses to provide health care services, except that, for each defendant, the term does not include its own parent corporation and any entity owned or controlled by means of corporate membership or otherwise, either directly or indirectly by the defendant or its parent.

(H) "Historic compensation" means compensation that was at one time, but that is no longer, utilized in paying any employee.

(I) "Hospital defendant" means any defendant employing nurses to provide health care services.

(J) "Joint venture" means a joint arrangement in which two or more health care facilities pool their resources to finance a venture and substantially share in the risk of adverse financial results.

(K) "Nurse" means any registered or practical nurse, nurse practitioner, or nurse specialist, whether an employee or independent contractor.

(L) "Prospective compensation" means compensation that a defendant or health care facility plans or proposes to pay any employee.

(M) "Utah" means within the State of Utah.

IV.

PROHIBITED CONDUCT

(A) Except as provided for by Section IV(B) and (C), each hospital defendant is prohibited from:

(1) agreeing with any other health care facility in Utah to fix, limit, or maintain the compensation paid to nurses;

(2) agreeing with any other health care facility in Utah to communicate or exchange information concerning the current or prospective compensation paid to nurses; or

(3) communicating to, requesting from, or exchanging with any other health care facility in Utah or third party, other than one owned directly or indirectly by the hospital

defendant or its parent, information concerning the current or prospective compensation paid to nurses.

(B) Nothing in this Final Judgment shall prohibit any hospital defendant from:

(1) communicating its own historic or current compensation information exclusively for the purpose of recruiting nurses for employment;

(2) communicating its own prospective compensation information to an individual nurse in connection with an offer or discussion of employment;

(3) providing or receiving historic or current compensation information to or from a third party, other than a health care facility in Utah, in response to a compensation survey conducted in accordance with the conditions detailed in either (a) or (b) below:

(a) any requests for information and any dissemination of information in connection with the survey are in writing, and:

(1) the survey is conducted and published without involvement by any representative, agent, independent contractor, or employee of any hospital defendant or any health care facility in Utah, except that a representative, agent, or employee of any hospital defendant or any health care facility may communicate individually and separately with the third party responsible for conducting and publishing the survey concerning the design and development of the survey, and may

provide written data in response to a written request for information in connection with the survey;

(ii) the survey includes only historic or current compensation information, and does not request or disseminate prospective compensation information;

(iii) the survey does not request or disseminate actual pay rates when the only health care facilities that participated in the survey operate in Utah. The survey, however, may request and disseminate average pay rates;

(iv) the survey disseminates only aggregate data, and either:

(iv.a) each disseminated statistic is based on data from at least ten (10) separately owned and operated health care facilities; or

(iv.b) no information about a compensation practice, including a wage increase, is provided by a survey participant within three months of the adoption of that practice; each disseminated statistic is based on data from at least five (5) separately owned and operated health care facilities; and any information disseminated in such a survey is sufficiently aggregated that recipients cannot identify the compensation paid by any survey participant;

(v) no individual separately owned and operated health care facility's data represents more than

twenty-five (25) percent on a weighted basis of each aggregated statistic; and

(vi) representatives, agents, independent contractors, or employees of any hospital defendant or any health care facility in Utah do not have access to any unaggregated data produced in response to any request for information in connection with the survey; or

(b) any compensation information is provided in writing, and the defendant hospital has received written assurance that the survey will be conducted in accordance with the conditions detailed below:

(i) the survey disseminates aggregate data only, from a sufficiently large number of participants that data cannot be identified with any particular health care facility or health care facility chain;

(ii) representatives, agents, or employees of any health care facility in Utah (excluding the third party conducting the survey) do not have access to any unaggregated data produced in response to any request for information in connection with the survey; and

(iii) if a majority of the health care facilities that participated in the survey operate or are headquartered in Utah, the survey may not identify the facilities that participated in the survey, may not disseminate

entry level rates for a particular position, and may only disseminate the average pay rate for that position;

(4) communicating any compensation information to a person, except as described and limited in Section IV(B)(1) - (3), provided that:

(a) no information is directly or indirectly conveyed to the Utah Hospital Association, the Utah Society for Healthcare Human Resources Administration, or to any health care facility in Utah;

(b) the defendant advises the person of the existence of this Final Judgment;

(c) the hospital defendant requires, if within its power, or requests if not, that any current or prospective compensation information provided not be communicated to another health care facility in Utah; and

(d) except when subject to subpoena or other legal compulsion, the information is not provided for the purpose of analyzing or setting any compensation practice for any party except the hospital defendant providing the information; or

(5) participating in a joint venture to provide health care services and engaging in conduct, including setting the salaries of nurses of the joint venture, that is ancillary to, and reasonably necessary to achieve the benefits of, the joint venture, provided that the joint venture is not formed for the primary purpose of purchasing nursing services.

(C) Nothing in this Final Judgment shall prohibit incidental and nonsystematic communication between nurses in the employ of hospital defendants, provided these communications are not performed at the request, direction, suggestion, or order of a head nurse or any person listed in V(A), and the nurse has no role in setting nurse compensation.

V.

COMPLIANCE PROGRAM

Each defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. Each Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant institution to ensure that it complies with the Final Judgment. Each defendant's Antitrust Compliance Officer shall:

(A) Distribute, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all trustees, officers, directors, administrators, assistant administrators, chief financial officers, non-clerical human resources and compensation staff, directors of nursing, and nurse recruiters of his or her defendant institution, except, for IHC this

subsection applies to all trustees, officers, and non-clerical human resources and compensation staff at the Central Office of IHC Hospitals, Inc. and the administrators, assistant administrators, chief financial officers, non-clerical human resources and compensation staff, directors of nursing, and nurse recruiters of the defendant IHC hospitals in Salt Lake County.

(B) Distribute in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section V(A).

(C) Brief annually those persons then holding the positions designated in Section V(A) on the meaning and requirements of this Final Judgment and the antitrust laws and advise them that the defendant's legal advisors are available to confer with them concerning compliance with the Final Judgment and the antitrust laws.

(D) Obtain from each person then holding one of the positions designated in Section V(A) an annual written certification that he or she:

(1) has read, understands, and agrees to abide by the terms of this Final Judgment;

(2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(3) is not aware of any violation of this decree that he or she has not reported to the Antitrust Compliance Officer.

(E) Maintain a record of recipients to whom the Final Judgment has been distributed and from whom the certifications obtained, as required by Section V(D).

VI.

CERTIFICATION

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has distributed this Final Judgment and the notification in accordance with Section V above.

(B) For each year of the term of this Final Judgment, each defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Section V above.

(C) If at any time a defendant's Antitrust Compliance Officer learns of any violation of Section IV of this Final Judgment, that defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VII.

INSPECTION

(A) To determine or secure compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in

charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted:

(1) access during that defendant's administrative office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview that defendant's trustees, officers, employees, and agents concerning such matters. The interviews shall be subject to the defendant's and individual's reasonable convenience and without restraint or interference from the defendant. Counsel for the defendant or counsel for the individual interviewed may be present at the interview.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested, provided that the preparation of such report will not unduly burden the defendant or disrupt defendant's operations.

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

TERM

This Final Judgment shall expire five (5) years from the date of entry.

IX.

OPPORTUNITY TO MODIFY

(A) If, subsequent to the entry of this Final Judgment, a stipulated final judgment in this matter incorporating different items is filed with respect to another hospital defendant, or if this Final Judgment or a subsequently filed stipulated final judgment with respect to a hospital defendant in this matter is modified to include different terms, any hospital defendant, in its sole discretion, may move this Court to substitute such different terms.

(B) Any hospital defendant may move the Court to apply this Final Judgment in lieu of any other stipulated final judgment in this matter, for any other hospital that hospital defendant, or its parent, acquires. In addition, any hospital defendant shall move this Court to apply this Final Judgment to any other hospital that it or its parent acquires against which a complaint in this matter is outstanding, in full settlement of the pending litigation. Either Motion must be made within thirty (30) days of the acquisition.

(C) The plaintiff will support any motion made in accordance with this Section.

x.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED:

October 27, 1994
March 14, 1994
None pro func

J. Paul Greene
UNITED STATES DISTRICT JUDGE