

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

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.

Civil Action No.

94C2826

COMPETITIVE IMPACT
STATEMENT

3/14/94

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties, Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the three proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On March 14, 1994, the United States filed a civil antitrust Complaint alleging that the defendants and

co-conspirators unreasonably conspired to restrain wage competition among themselves in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, from at least as early as January, 1984 and continuing through June, 1992, the defendants and co-conspirators conspired to exchange current and prospective, nonpublic registered-nurse entry wage information with the purpose and effect of restraining wage competition for registered nursing services in Salt Lake County, Utah.

The conspiracy was effectuated through telephone calls and written surveys between the hospital defendants and co-conspirators, and through meetings of the Utah Society for Healthcare Human Resources Administration ("USHHRA") and the Utah Hospital Association ("UHA"), both of which consist of human resource directors from the hospital defendants. The hospital defendants agreed to exchange prospective and current compensation information. The conspiracy had the effect of depriving registered nurses in Salt Lake County and elsewhere in Utah of the benefits of free and open competition in the purchase of registered nursing services. In addition, the conspiracy resulted in smaller annual increases in the registered-nurse entry wage than the hospital defendants would have paid absent the conspiracy.

The Complaint seeks to prevent the defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy, or adopting any practice having a similar purpose or effect for a period of 5 years.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of Section V of their respective Final Judgments.

Entry of the proposed Final Judgments will terminate the action against all the defendants, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

II.

DESCRIPTION OF THE PRACTICES
INVOLVED IN THE ALLEGED VIOLATIONS

At trial, the Government would have made the following contentions:

1. The hospital defendants, St. Benedict's Hospital, IHC Hospitals, Inc. ("IHC"), 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, provide and sell general acute-care hospital services and recruit and hire nurses. The hospital defendants located in Salt Lake County compete with each other in recruiting and hiring nurses and purchase approximately 75% of the registered nursing services in that County.

2. On a regular basis, the hospital defendants telephoned one another and exchanged nonpublic prospective and current

wage and budget information for nurses. On a number of occasions, hospital defendants told each other, including IHC, of their intent to match whatever registered-nurse entry wage IHC eventually adopted.

3. On at least eight occasions between 1984 and 1992, some or all of the hospital defendants attended meetings organized by USHHRA for the express purpose of exchanging nonpublic prospective and current wage and budget information about registered nursing wages.

4. Annually, IHC collected current and nonpublic prospective wage and budget information from the other hospital defendants for use in a published wage survey that was distributed to the other hospitals. IHC used this information to limit its registered-nurse wage increases.

5. Annually, the UHA collected current and, in some years, prospective information pursuant to a survey designed by the hospital defendants. This information was published and distributed to the hospital defendants, which used this information to limit registered-nurse wage increases.

6. As a direct result of these wage and budget exchanges, the hospital defendants' registered-nurse entry wages in Salt Lake County and elsewhere in Utah were kept artificially low, and registered nurses were paid these lower wages from 1984 through June, 1992.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENTS

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgments after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h). Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgments may not be entered unless the Court finds that entry is in the public interest. Section X of each of the three proposed Final Judgments sets forth such a finding.

The proposed Final Judgments are intended to ensure that the hospital defendants reach independent decisions about the wages they pay registered nurses by prohibiting agreements, discussions, or other communications among competing hospitals of current and prospective registered nursing wages, and to ensure that USHHRA and the UHA are not used as forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

A. Prohibitions And Obligations

The Hospital Defendants' Final Judgment enjoins the hospital defendants from entering into any agreement with any other health care facility to fix nursing wages. It also prohibits them from discussing with any health care facility in Utah or with any third party, prospective or current budget or

nursing wage information, or the timing of wage increases, except in very limited circumstances when the communications are solely for the purpose of recruiting or hiring a nurse.

The Hospital Defendants' Final Judgment further prohibits the hospital defendants from developing, supervising, or participating in a salary survey asking for current or prospective wage information concerning nurses or in which the wage information is presented in a manner that would allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses.

The Hospital Defendants' Final Judgment obligates each hospital defendant to file with plaintiff, on or before each anniversary date of the Final Judgment, a statement that the defendant has complied with the terms of the Final Judgment and has had no communications of the type prohibited under the Final Judgment.

The Hospital Defendants' Final Judgment also provides that an authorized representative of the Department of Justice may visit the defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. The defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

The USHHRA Final Judgment prohibits USHHRA from conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning the

current or prospective compensation paid to nurses. It also prohibits USHHRA from conducting or facilitating any exchange or discussion of information concerning compensation previously paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made.

The UHA Final Judgment prohibits the UHA from sponsoring or facilitating any exchange or discussion by or between any health care facilities of information concerning the compensation paid to nurses. The UHA Final Judgment does not, however, prohibit the UHA from sponsoring or publishing a survey of information concerning the compensation paid to nurses if, among other things: (1) any request for and dissemination of information is in writing, (2) the survey includes only historic or current compensation information and does not request or disseminate prospective compensation information, (3) the survey only disseminates aggregate data that is presented in a manner that would not allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses, and (4) health care facilities in Utah do not have access to unaggregated data produced in response to the survey.

The USHHRA and UHA Final Judgments have reporting and visitation provisions similar to the Hospital Defendants' Final Judgment.

B. Scope Of The Proposed Final Judgments

The Hospital Defendants' Final Judgment applies to the hospital defendants, as well as to each of their trustees, officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise. Moreover, pursuant to the terms of the Final Judgment, any person who becomes a trustee, officer, director, administrator, chief financial officer, non-clerical human resources and compensation staff member, director of nursing, or nurse recruiter within 5 years after the entry of the Final Judgment shall be furnished a copy of the Final Judgment.

The USHHRA and UHA Final Judgments have applicability and notification provisions similar to those of the Hospital Defendants' Final Judgment.

C. Effect Of The Proposed Final Judgments On Competition

The relief in the proposed Final Judgments is designed to ensure that hospitals in Salt Lake County establish their registered-nurse wages independently and that registered nurses receive competitive wages. Specifically, the injunction against exchanges of current and prospective wages and budget information and the reporting requirements of Section IV and

Section VI of the Hospital Defendants' Final Judgment are designed to eliminate restraints on wage competition among hospitals in Salt Lake County. The injunction against conducting or facilitating the exchange of information concerning the compensation paid to nurses and the reporting requirements of Sections IV and VI of both the USHHRA and UHA Final Judgments are designed to preclude those organizations from being forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

The Department of Justice believes that these proposed Final Judgments contain adequate provisions to prevent further violations of the type described in the Complaint and to remedy the effects of the alleged conspiracy.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgments will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgments have no prima

facie effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V.

PROCEDURES AVAILABLE FOR
MODIFICATION OF THE PROPOSED JUDGMENTS

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgments should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. Section I of each of the proposed Final Judgments provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgments.

VI.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENTS

The alternative to the proposed Final Judgments would be a full trial of the case against the defendants. The Department

of Justice believes that such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgments provide the relief that the United States seeks in its Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgments.

Dated:

Respectfully submitted,

Edward D. Eliasberg, Jr.
Edward D. Eliasberg, Jr.

Karen L. Gable
Karen L. Gable

Jesse Caplan
Jesse M. Caplan

Kenneth M. Dintzer/KLG
Kenneth M. Dintzer

Attorneys
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001
202/307-0808

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Competitive Impact Statement was sent by regular mail on this 14th day of March, 1992, to:

Jay D. Gurmankin
1010 Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111

Richard W. Casey
Giauque, Crockett, & Bendinger
500 Kearns Building
Salt Lake City, Utah 84101

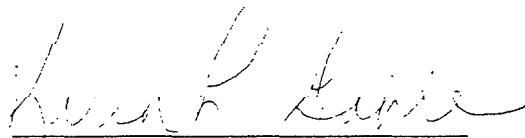
Robert D. Paul
Thomas C. Hill
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Gordon B. Nash, Jr.
Gardner, Carton & Douglas
Suite 3400 - Quaker Tower
321 N. Clark Street
Chicago, IL 60610-3381

Phillip Proger
Robert Jones
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088

Greg Tucker
1 Park Plaza
Nashville, TN 37203

Brent Ward
Parry, Murray, Ward & Cannon
1270 Eagle Gate Tower
Salt Lake City, Utah 84111


Karen L. Gable, Attorney
Antitrust Division