

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:

15 U.S.C. § 1
(Antitrust Violation Alleged)

15 U.S.C. § 4
(Equitable Relief Sought)

COMPLAINT

The United States of America, by its attorneys and acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against the named defendant and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. The United States files this Complaint under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain defendant's continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The defendant maintains offices, transacts business, and is found within the Western District of Missouri, within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22.

II.

DEFENDANT

3. The Association of Family Practice Residency Directors ("AFPRD") is a Missouri not-for-profit corporation with its principal place of business in Kansas City, Missouri. The AFPRD is a national professional association that was established in 1989 to represent the directors of hospital residency programs that provide graduate education in the specialty of family practice medicine. Currently, the AFPRD has approximately 427 member directors, who in their official capacity represent family practice residency programs located at hospitals throughout the United States, and who constitute approximately 95% of all family practice residency program directors nationwide.

III.

CONCERTED ACTION

4. Various organizations and individuals not named as defendants in this Complaint have participated in the promulgation and endorsement of, and have agreed to comply with, the AFPRD's ethical guidelines for resident recruiting and otherwise participated with the defendant in the violation alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

IV.

INTERSTATE COMMERCE

5. The AFPRD circulates correspondence and notices, holds annual and other meetings, collects annual dues, establishes, disseminates, and encourages compliance with ethical guidelines, and engages in other activities that cross state lines or require its members to cross state lines.

6. Family practice residency programs whose directors are members of the AFPRD recruit across state lines senior medical students and current family

practice residents (those already employed by other programs) located throughout the United States to fill positions for residents in their programs.

7. In recruiting senior medical students and current family practice residents, family practice programs offer and remit across state lines substantial employment benefits and incentives to induce prospective residents to commit to those programs.

8. In addition, family practice residency programs negotiate and enter into substantial numbers of employment contracts across state lines with prospective and current residents located in other states.

9. The activities of the defendant and others that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

V.

RESTRAINT OF TRADE

10. In the late 1980s, competition increased among family practice residency programs for senior medical students, as well as for residents already employed by other family practice residencies, to fill vacancies for first- and second-year positions.

11. As a result of this increased competition, family practice residency programs began actively and directly to solicit the transfer of first year residents employed by other family practice residency programs. This solicitation sometimes occurred without the knowledge of the other programs.

12. Family practice residency programs also increasingly began to offer economic inducements to both senior medical students and current family practice residents in order to attract them to those programs.

13. These inducements were sometimes offered to medical students before the annual placement process, known as the "Match," conducted by the National Resident Matching

Program, through which senior medical students and hospital residency programs are matched through a computer program with their respective preferences for the upcoming year's residency programs.

14. Beginning in approximately 1990, the AFPRD began to receive an increasing number of complaints from its member program directors about competition from other family practice residency programs for senior medical students and current residents to staff residencies for the upcoming year.

15. For the purpose of eliminating the growing competition among family practice residency programs to employ senior medical students and current family practice residents, in 1992 the AFPRD promulgated "Guidelines on the Ethical Recruitment of Family Practice Residents" (the "Guidelines").

16. The Guidelines embody an agreement among the member family practice residency program directors to limit that competition among themselves by:

- (a) not directly soliciting family practice residents from other residencies;

- (b) not offering contracts to applicants who are current residents in other family practice programs without the knowledge of the other program director;
- (c) making each incentive and other employment benefit offered to any applicant available to all applicants; and
- (d) not providing any inducements before the Match.

17. After being distributed to and approved by the AFPRD membership, the Guidelines were distributed to and endorsed by other organizations concerned with family medicine or resident recruiting, and since that time have been provided to members and proxies at the AFPRD's annual business session, as well as to any individual upon request.

18. The AFPRD responds to every complaint regarding a possible violation of the Guidelines by contacting both the complainant and the alleged violator to investigate the complaint, and where a violation has

occurred, by informing the program director that his or her actions have violated the Guidelines.

19. Since the Guidelines were disseminated, competition among family practice residency programs to employ senior medical students and current family practice residents to those programs has been significantly reduced, and the terms and conditions of their employment have been less attractive than they could have obtained in a free and competitive market.

VI.

VIOLATION ALLEGED

20. Beginning at least as early as June, 1992, and continuing until at least the date of this Complaint, the defendant and others engaged in a contract, combination, or conspiracy that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue or recur unless the relief requested is granted.

21. This contract, combination, or conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and others to

establish and adhere to ethical guidelines to restrain competition among family practice residency programs to employ senior medical students and current family practice residents.

22. For the purpose of forming and effectuating this contract, combination, or conspiracy, the defendant and others did the following things, among others:

- (a) Promulgated and agreed to the Guidelines governing resident recruiting by family practice residency programs;
- (b) Through those Guidelines, prohibited the use of certain recruiting practices such as directly soliciting current residents in other programs, offering a contract to a resident in another program without providing notice to that program's director, and regulating or restricting the payment of certain economic inducements; and

(c) Disseminated and ensured compliance with the Guidelines.

23. This contract, combination, or conspiracy has had the following effects, among others:

- (a) It restrained price and other forms of competition among family practice residency programs to recruit and employ senior medical students and current family practice residents; and
- (b) It deprived senior medical students and current family practice residents of the benefits of free and open competition in recruiting and purchasing their services.

VII.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff requests:

1. That the Court adjudge and decree that the defendant engaged in a combination and conspiracy that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. That the defendant, its officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on behalf of any of them, be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, continuing, maintaining, or renewing the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation; and

3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

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