

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED
DES MOINES, IOWA

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ASSOCIATION OF GREATER
DES MOINES, INC.;

BROADLAWNS MEDICAL CENTER;

DES MOINES GENERAL HOSPITAL COMPANY;

IOWA LUTHERAN HOSPITAL;

IOWA METHODIST MEDICAL CENTER;

MERCY HOSPITAL MEDICAL CENTER,
DES MOINES, IOWA,

Defendants.

Civil Action No.

Filed: 4 - 92 - 70648

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint on September 22, 1992, 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 any evidence against or an admission by any party with respect 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:

I.

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 each defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

This Final Judgment applies to each defendant and to each of their 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.

III.

As used in this Final Judgment:

(A) "Des Moines area" means Polk County, Iowa.

(B) "Management Employee" means any employee who supervises the preparation of or approves any price, charge, or discount schedule; any wage, salary, or employee benefit schedule; any budget or financial plan; any marketing or advertising plan; any long range or strategic plan; or any plan to acquire materials, equipment, or services. This definition includes but is not limited to the chief executive officer and/or administrator, the chief financial officer, vice presidents and/or assistant administrators, and the individuals who head the divisions or departments responsible for human resources, materials management, strategic and financial planning, marketing, public relations, and advertising.

IV.

Each defendant is enjoined and restrained from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any other hospital in the Des Moines area or any Des Moines area hospital association to limit or regulate the types or amounts of advertising by any hospital in the Des Moines area.

V.

Nothing in this Final Judgment shall prohibit any defendant from advocating, in accordance with the doctrine established in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions, or governmental policies or actions, relating to the practices identified in Section IV above.

VI.

Each defendant is ordered to maintain an antitrust compliance program which shall include:

(A) distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all directors, officers, and management employees;

(B) notifying, within 60 days from the entry of this Final Judgment, all directors, officers, and management employees that the defendant will not be bound by the Hospital Association of Greater Des Moines Guidelines on Advertising, dated October 26, 1989;

(C) distributing in a timely manner a copy of this Final Judgment to any person who succeeds to a position as director, officer, or management employee;

(D) holding a briefing annually for all directors, officers, and management employees on (1) the meaning and requirements of this Final Judgment including the consequences of non-compliance with this Final Judgment; and (2) the application of the antitrust laws to the defendant's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements to allocate services, equipment or facilities or any other joint activities, and (b) exchanging competitive information such as contemplated or expected changes in prices or employees' salaries or benefits; and

(E) maintaining for inspection by plaintiff a record of the directors, officers, and management employees who attend each annual briefing.

VII.

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

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to the Court and the plaintiff whether that defendant has complied with the provisions of Section VI above.

VIII.

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

- (1) access during office hours of such defendant to inspect and copy all records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice 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.

IX.

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement, modification, or termination of any of its provisions, and for the punishment of any violation hereof.


X.

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

XI.

Entry of this Final Judgment is in the public interest.

DATED: March 5, 1993.


United States District Judge