

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

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
SEP 12 1994
BY MARKUS B. ZIMMER, CLERK
RECEIVED CLERK
14
MAR 13 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,
DEPENDANTS.

U.S. DISTRICT COURT
Civil Action No. 94-C-282G
Entered: September 9, 1994

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint
on Sept 14, 1994, 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 defendant 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 defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

APPLICABILITY

This Final Judgment applies to the defendant and to each of its 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.

DEFINITIONS

As used in this Final Judgment:

(A) "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 changes in any of these components of payment.

(B) "Current compensation" means compensation that a defendant or health care facility currently pays to employees.

(C) "Defendant" means Utah Society for Healthcare Human Resources Administration.

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

(E) "Health care facility" means any entity employing nurses to provide healthcare services.

(F) "Historic compensation" means compensation that a defendant or health care facility no longer pays to employees.

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

(H) "Person" means any natural person, corporation, firm, company, association or other business, legal, or government entity.

(I) "Prospective compensation" means compensation that a defendant or health care facility plans or proposes to pay employees.

IV.

PROHIBITED CONDUCT

Defendant is prohibited from:

(A) conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning;

(1) the current or prospective compensation paid to nurses, or

(2) the historic compensation paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made; and

(B) communicating to, requesting from, or exchanging with any health care facility in Utah information concerning the compensation paid to nurses, except nothing in this subsection shall prohibit the exchange or discussion of historic compensation as provided in IV(A)(2).

V.

COMPLIANCE PROGRAM

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. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and

proposed activities of the defendant to ensure that it complies with the Final Judgment. The Antitrust Compliance Officer shall:

(A) Distribute within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to each member of defendant;

(B) Distribute a copy of this Final Judgment to each person joining defendant as a member within 60 days of that person joining defendant;

(C) Hold an annual briefing of defendant's general membership on the meaning and requirements of this Final Judgment and the antitrust laws;

(D) Obtain from each of defendant's officers 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; and

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

VI.

CERTIFICATION

(A) Within 75 days after the entry of this Final Judgment, 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, 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 defendant's Antitrust Compliance Officer learns of any violation of Sections IV of this Final Judgment, 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) For the purpose of determining or securing 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 defendant be permitted:

(1) access during regular business 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 defendant's officers, members, employees, and agents concerning such matters. The interviews shall be subject to the defendant'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, 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 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.

POWER TO MODIFY

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 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.

X.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED:

September 9, 1994

J. Donald Greene

UNITED STATES DISTRICT JUDGE