

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP 12 1994

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

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.

RECEIVED CLERK

MAR 14 1994

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 March 11, 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) "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 changes in any of these components of payment.

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

(E) "Defendant" means Utah Hospital Association.

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

(G) "Health care facility" means any entity employing nurses to provide health care services, including but not limited to, any hospital, hospital corporation, HMO facility, ambulatory care center, clinic, first-aid clinic, urgent care center, free standing emergency care center, ambulatory surgery center, nursing home, home health care, and nursing service.

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

(I) "Nurse" means any registered or practical nurse, nurse practitioner, or nurse specialist.

(J) "Prospective compensation" means compensation that is planned or proposed to be utilized in paying any employee.

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

IV.

PROHIBITED CONDUCT

(A) Defendant is prohibited from:

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

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

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

(2) 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)(1).

(B) Nothing in this Final Judgment shall prohibit defendant from sponsoring, sanctioning, conducting, or publishing a survey of information concerning the compensation paid to nurses under the following conditions:

(1) any requests for information and any dissemination of information in connection with the survey is in writing;

(2) the survey is designed, developed, conducted, or published without involvement by any representative, agent, or employee of any health care facility in Utah, except that a representative, agent, or employee of any health care facility may provide written data in response to a written request for information in connection with the survey;

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

(4) the survey does not request actual pay rates when the only health care facilities that participated in the survey operate in Utah; the survey may request average pay rates;

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

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

(b) no information about a compensation practice, including a wage increase, is provided within three months of the adoption of that practice; each disseminated statistic is based on input 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;

(6) for each aggregated statistic, no individual separately owned and operated health care facility's data represents more than twenty-five (25) percent on a weighted basis of that statistic; and

(7) representatives, agents, or employees of 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.

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 institution to ensure that it complies with this 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 all officers, directors, agents, and non-clerical employees of the defendant.

(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 designated in Section V(A) and defendant's general membership 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 this 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) Distribute, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to each health care facility that is a member of defendant.

(F) Distribute a copy of this Final Judgment to each health care facility joining defendant as a member within 60 days of that health care facility joining defendant.

(G) Maintain a record of recipients to whom this 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, the 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 that defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment;

(2) to interview that defendant's officers, directors, 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.

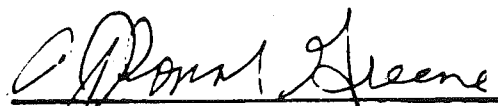
X.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED:

September 9, 1994


UNITED STATES DISTRICT JUDGE