

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 vs. ) Civil Action No. C-30-61  
 )  
 UTAH PHARMACEUTICAL ASSOCIATION, )  
 )  
 ) Defendant. )  
\_\_\_\_\_ )

FINAL JUDGMENT

1 Plaintiff, United States of America, having filed its complaint  
2 herein on March 7, 1961; defendant Utah Pharmaceutical Association  
3 having filed its answer to said complaint on August 4, 1961; the  
4 matter having been tried on November 21 and 22, 1961; and the court  
5 having filed its memorandum decision on January 3, 1962;

6 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
7 as follows:

8 I

9 This court has jurisdiction of the subject matter and of the  
10 parties hereto. Defendant has combined and conspired with its officers,  
11 directors and members and with various local pharmaceutical associations  
12 to restrain trade and commerce in the sale of prescription drugs in  
13 violation of section 1 of the Act of Congress of July 2, 1890, entitled  
14 "An Act to protect trade and commerce against unlawful restraints and  
15 monopolies," commonly known as the Sherman Act, as amended.

16 II

17 As used herein:

18 (a) "Prescription drug" is a medication for treatment of humans,  
19 sold to fill a prescription written by a physician or other person  
20 duly licensed to prescribe for the treatment of human ailments;  
21  
22

1 (b) "Pharmacist" is an individual duly licensed to fill pre-  
2 scriptions written for the treatment of human ailments;

3 (c) "Prescription pricing schedule" is a formula or price list  
4 designed for use in computing prices to be charged for prescription  
5 drugs;

6 (d) "Person" is any individual, firm, partnership, corporation,  
7 association, trustee or any other business or legal entity.

8 III

9 The provisions of this decree shall apply to defendant Utah  
10 Pharmaceutical Association, its officers, directors, agents, members  
11 and employees, and other persons in active concert or participation  
12 with said defendant who shall receive actual notice of this decree by  
13 personal service or otherwise.

14 IV

15 Defendant is hereby perpetually enjoined and restrained from,  
16 directly or indirectly:

17 (a) Continuing to carry out the combination and conspiracy to  
18 restrain the sale of prescription drugs as found herein, or any like  
19 or similar combination or conspiracy to restrain trade and commerce in  
20 the sale of prescription drugs, or any combination or conspiracy having  
21 a like or similar purpose or effect;

22 (b) Entering into, adhering to, maintaining or furthering any  
23 contract, agreement, understanding, plan or program (i) to fix,  
24 determine, maintain or suggest prices or other terms or conditions for  
25 the sale of prescription drugs, (ii) to formulate, adopt, issue, distri-  
26 bute, recommend or suggest the use by any pharmacist or any other  
27 person of any prescription pricing schedule or other list, formula,  
28 guide, schedule, or method for pricing prescription drugs;

29 (c) Advocating, suggesting, urging, inducing, compelling, or in  
30 any other manner influencing or attempting to influence any person to  
31 use or adhere to any prescription pricing schedule or schedules or any  
32 other list, formula, guide, schedule or method for pricing prescription  
drugs;

1 (d) Policing or making individual contact with any pharmacist or  
2 other person or devising or putting into effect any procedure to  
3 ascertain, determine, fix, influence, or suggest the price at which  
4 any prescription drug is or may be sold by any pharmacist, or the  
5 professional fee charged or to be charged by any pharmacist in  
6 connection with the sale of any prescription drug.

7 Nothing in sub-sections (b), (c), or (d) of this section IV shall  
8 be construed to restrain any pharmacy owner member of defendant Asso-  
9 ciation from requiring his employees to sell prescription drugs at  
10 prices, and upon terms and conditions of sale, established by such  
11 pharmacy owner in pharmacies owned or operated by said pharmacy owner.

12 At any time, any agency of the United States or of the State of  
13 Utah may, upon grounds of undue hardship to it, and without having  
14 standing as a party herein, petition this court for an order enabling  
15 defendant Association to negotiate and enter into a contract for the  
16 sale of prescription drugs where the price of such prescription drugs  
17 will be paid for by the petitioning agency. Such petition may be in  
18 the form of a letter to the court with copies to be served on both the  
19 plaintiff and defendant herein. The matter will then be set for hearing  
20 at which time the petitioning agency may produce witnesses and other  
21 evidence in support of its petition. Plaintiff and defendant will be  
22 permitted to be heard and make objections to any such proposed negoti-  
23 ation or contract. Permission by this court to enter into any such  
24 contract shall not be considered an adjudication as to the legality or  
25 illegality of such contract under the antitrust laws, nor shall it be  
26 deemed to bar or estop the plaintiff from attacking the legality of any  
27 such contract under the antitrust laws generally.

28 v

29 Defendant Association is hereby ordered and directed to dissolve  
30 its committee on Prescription Pricing, Wages and Hours, and is enjoined  
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32

1 and restrained from forming, appointing, or maintaining such committee  
2 or any similar committee.

3 VI

4 (a) Defendant Utah Pharmaceutical Association is ordered and  
5 directed, within 30 days after the entry of this final judgment, to  
6 serve by mail upon each of its members a conformed copy of this final  
7 judgment. Said defendant is further ordered and directed to thereupon  
8 file an affidavit with the clerk of this court that it has done so,  
9 which affidavit shall set forth the name and address of each person so  
10 served;

11 (b) Defendant Utah Pharmaceutical Association is ordered and  
12 directed to furnish a copy of this final judgment ~~upon~~ each new member  
13 thereon at the time of acceptance of such membership and to obtain  
14 from each such member, and keep for ten years in its files, a receipt  
15 therefor signed by each such new member.

16 VII

17 For the purpose of securing compliance with this final judgment,  
18 duly authorized representatives of the Department of Justice shall,  
19 upon written request of the Attorney General or the Assistant Attorney  
20 General in charge of the Antitrust Division, and on reasonable notice  
21 to the defendant, and subject to any legally recognized privilege,  
22 be permitted:

23 (a) Reasonable access during the office hours of the defendant  
24 to all books, ledgers, accounts, correspondence, memoranda, and other  
25 records and documents in the possession or under the control of the  
26 defendant, relating to any matters contained in this final judgment;  
27 and

28 (b) Subject to the reasonable convenience of the defendant, and  
29 without restraint or interference from it, to interview officers and  
30 employees of the defendant (who may have counsel present) regarding  
31 such matters.

VIII

Jurisdiction is retained for the purpose of enabling any of the parties to this final judgment to apply to the court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of the final judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

Dated: January 31, 1962

/s/ A. Sherman Christenson  
United States District Judge