

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The College of American Pathologists, U.S. District Court, N.D. Illinois, 1969 Trade Cases ¶72,825, (Jul. 14, 1969)

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United States v. The College of American Pathologists

1969 Trade Cases ¶72,825. U.S. District Court, N.D. Illinois. Civil Action No.66 C 1253. Entered July 14, 1969. Case No. 1902 in the Antitrust Division of the Department of Justice

## Sherman Act

**Conspiracy to Monopolize—Commercial Medical Laboratories.**—An association of pathologists was barred by the terms of a consent decree from attempting to prevent other persons from entering or conducting a commercial medical laboratory business. The decree prohibits the defendant, and any persons acting with it, from restricting or preventing any person from organizing, owning or operating any laboratory, from referring specimens or patients to any laboratory, from performing laboratory services for any person, or from associating or affiliating with any laboratory or being employed by any laboratory. The decree also prohibits the association from attempting to control or influence prices for medical laboratory services.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Lewis Bernstein, Burton R. Thorman, Jerry Z. Pruzan, Kathleen Devine, and Donald J. Fricke, Attys., Dept. of Justice.

For the defendant: Vedder, Price, Kaufman & Kammholz, by Paul G. Gebhard, Chicago, Ill.; Hogan & Hartson, by George W. Wise, Washington, D. C.

## Final Judgment

PARSONS, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 7, 1966 and its amended complaint on January 23, 1967, and defendant having filed its answer to said amended complaint denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed, as follows:

### I

#### [ Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

### II

#### [ Definitions]

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Laboratory" shall mean any person lawfully engaged under either Federal or any state law and/or regulation in conducting bioanalytical tests on material obtained from the human body and rendering reports on the findings of such tests for physicians to utilize as an aid to diagnosis and treatment of their patients;

(C) "Laboratory services" shall mean the bioanalytical testing of material obtained from the human body and the preparation of reports on the findings of such tests by a laboratory.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its directors, officers, agents, employees, subsidiaries, successors and assigns, and to all members and other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

#### [ *Restraint of Trade* ]

The defendant, whether acting alone, or in concert, agreement or understanding with any other person, is enjoined and restrained from, directly or indirectly:

(A) Restricting, or preventing, or attempting to restrict or prevent any person from

1. organizing, owning or operating any laboratory;
2. referring any specimen or patient to any laboratory or obtaining laboratory services from any laboratory;
3. performing laboratory services for any person;
4. associating or affiliating with any laboratory, or being employed by, any laboratory.

(B) Requiring or coercing any other person to (i) refrain from accepting advertising from any person, or (ii) refuse to permit any person to exhibit at any medical or scientific meeting;

(C) Boycotting or otherwise refusing to do business with or imposing any sanction or penalty upon any person because such person does business or associates or affiliates with or is employed by any laboratory;

(D) Requiring or coercing or attempting to require or coerce any person to adopt, adhere to or enforce any criteria established by defendant with respect to (i) the compensation to be paid by any hospital to any laboratory or laboratory director, or (ii) the purchase or rental by a laboratory or laboratory director from a hospital of space, services, supplies or equipment.

### V

#### [ *Price Fixing* ]

Defendant is enjoined and restrained from, directly or indirectly

(A) Requiring or suggesting that the fee schedules of any laboratory in a given locality must be the same or substantially the same as the fee schedules of any other laboratory doing business in the same locality;

(B) Preventing or restricting any laboratory from establishing or adhering to its own independently established price or prices for any laboratory service rendered by it.

### VI

#### [ *Amendment of By-Laws* ]

(A) Defendant is ordered and directed within six (6) months from the date of entry of this Final Judgment to amend its bylaws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Upon amendment of its bylaws, rules and regulations as aforesaid, the defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any bylaw, rule or regulation having any purpose or effect contrary to or inconsistent with any of the provisions of this Final Judgment.

## VII

### **[ Reasonable Restrictions]**

Unless precluded by other provisions of this Final Judgment, the defendant may

(A) Recommend or adopt lawful, reasonable and non-discriminatory technical or performance standards for the operation or accreditation of laboratories and maintain a program of inspection and accreditation of laboratories, which program shall be made available upon an impartial basis to all laboratories desiring to participate;

(B) Impose sanctions upon any of its members if, after investigation, defendant has grounds to believe that such member is deficient in moral character or professional competence, or that he has been guilty of professional misconduct;

(C) Require any of its members to report the results of laboratory tests only to physicians and others permitted by law to receive such results.

## VIII

### **[ Publication of Judgment]**

Defendant is ordered and directed to mail, within sixty (60) days after the date of entry of this Final Judgment, a copy thereof to each of its members and to each person listed in Schedule (A) attached to this Final Judgment and within ninety (90) days from the aforesaid date of entry to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with this Section VIII.

## IX

### **[ Compliance]**

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (1) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of the defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section IX 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## X

### **[ Jurisdiction Retained]**

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

**Schedule (A)**

- (1) American Medical Association
- (2) American Hospital Association
- (3) American Academy of Microbiology, Inc.
- (4) American Association of Bioanalysts
- (5) American Association of Clinical Chemists
- (6) American Association of Immunologists
- (7) American Board of Clinical Chemistry
- (8) American Chemical Society
- (9) American Institute of Biological Sciences
- (10) American Institute of Chemists
- (11) American Society of Biological Chemists, Inc.
- (12) American Society of Clinical Pathologists
- (13) American Society of Medical Technologists
- (14) American Society of Professional Biologists, Inc.
- (15) American Society for Microbiology
- (16) Joint Commission on Accreditation of Hospitals
- (17) American College of Physicians
- (18) American College of Surgeons
- (19) American Society of Internal Medicine
- (20) American Cancer Society
- (21) American Cytology Society
- (22) American Board of Pathology
- (23) The society or association of pathologists in the District of Columbia, and each state and territory in the United States;
- (24) The medical society or association of the District of Columbia, and each state and territory of the United States;
- (25) Los Angeles Society of Pathologists
- (26) San Diego Society of Pathologists
- (27) Los Angeles County Medical Association