

**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MICHIGAN
Southern Division**

JOSH SCHEXNAILDRE, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MUNSON HEALTHCARE and TRAVERSE
ANESTHESIA ASSOCIATES, P.C.,

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Josh Schexnaildre (“Plaintiff”), on his behalf and on behalf of a proposed class of similarly situated individuals, hereby alleges as follows against defendants Munson Healthcare (“Munson”) and Traverse Anesthesia Associates, P.C. (“TAA”).

INTRODUCTION

1. This action addresses an agreement between Munson, which bills itself as “northern Michigan’s largest and leading healthcare system” and TAA, which is a “medical professional corporation that provides anesthesia and pain management services at several general hospitals and outpatient sites in the Grand Traverse region,” to restrain competition and reduce compensation for providers of anesthesia services. Plaintiff is a Certified Registered Nurse Anesthetist (“CRNA”) who brings this suit individually and on behalf of the Proposed Class to enjoin Defendants from maintaining and enforcing their unlawful “no poach” agreement, and to recover damages.

2. Defendants Munson and TAA (collectively “Defendants”) compete with one another to hire and retain qualified providers of anesthesia services, including CRNAs. Beginning

on a date currently unknown to Plaintiff, Munson agreed that it would not solicit or hire TAA's anesthesia service providers while they were employed by TAA and for at least one year after the person had left TAA's employment. This agreement is still in effect and is being enforced by Munson.

3. The agreement between Munson and TAA was not ancillary to any legitimate business transaction or lawful collaboration between Defendants. Defendants' arrangement was a naked agreement to unlawfully eliminate competition for, suppress the compensation paid to, and otherwise reduce the expense of obtaining the services of qualified providers of anesthesia services.

4. Defendants' agreement accomplished its purpose. It eliminated competition for anesthesia service providers in northern Michigan and suppressed the compensation and benefits that otherwise would have flowed to anesthesia service providers had there been an open and competitive market for these services.

5. Defendants' agreement not only denied job opportunities that were otherwise available from Munson, but also prevented providers of anesthesia services employed by TAA and Munson from negotiating for better terms and conditions of employment.

6. The existence of this agreement was only revealed to the Plaintiff when he recently inquired about a CRNA position at a hospital operated by Munson. Plaintiff, who was employed by TAA, was told by the recruiter at the hospital that while there was an opening for a CRNA, which he was qualified to fill, the Plaintiff could not be considered for a position at any Munson facility during and for one year after his employment with TAA because of the agreement Munson has with TAA.

JURISDICTION AND VENUE

7. This action arises under Section 1 of the Sherman Act (15 U.S.C. § 1), Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26), and Sections 445.772 and 445.778, Section 8(2) of the Michigan Antitrust Reform Act (“MARA”). Plaintiff seeks the recovery of treble damages, costs of suit, and reasonable attorneys’ fees for the injuries that Plaintiff and members of the Proposed Class sustained as a result of Defendants’ anticompetitive conduct, as well as a declaration that the no-poach agreement is illegal and an injunction against its enforcement. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1367, 1407, and 15 U.S.C. § 15.

8. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a), 22 and 28 U.S.C. §§ 1391(b), (c), and (d) because during the Proposed Class Period, Defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of Defendants’ activity discussed below has been carried out in this District.

9. During the Proposed Class Period, Defendants assessed, hired, and retained employees and obtained goods and services in a continuous and uninterrupted flow of interstate commerce, including in this District. Defendants’ conduct had close and substantial effect on interstate commerce in the United States, including in this District.

10. This Court has *in personam* jurisdiction over Defendants because they, either directly or through the ownership or control of their subsidiaries, *inter alia*: (a) transacted business in this District; (b) participated in the assessment, hiring, and retention of employees in this District; (c) maintained substantial aggregate contacts with this District; or (d) entered into an illegal agreement that was directed at, and had a direct, substantial, reasonably foreseeable, and

intended effect of causing injury to the business or property of persons residing in, located in, or doing business in this District

PARTIES

11. Plaintiff Josh Schexnaildre was employed by TAA as a CRNA during the Proposed Class Period.

12. Defendant Munson Healthcare is a not-for-profit health care system serving northern Michigan with its headquarters located at 1105 Sixth Street, Traverse City, Michigan. It is the largest health care system in northern Michigan, serving people in 30 counties, and owns or operates nine hospitals. It is estimated to have an 89% market share in Traverse County. Munson had revenue from charges for services of over \$80.9 million in 2018.

13. Defendant Traverse Anesthesia Associates, P.C. is located at 1221 6th Street, Traverse City, Michigan. TAA provides anesthesia and pain management services at hospitals and outpatient sites in northern Michigan.

FACTUAL ALLEGATIONS

Defendants' No-Poach Agreement

14. Munson and TAA are competitors in the recruitment, hiring, and retention of anesthesia service providers. At a time as yet unknown to Plaintiff, Munson and TAA entered into an agreement to eliminate competition between themselves for anesthesia service providers.

15. In 2021, Plaintiff learned that a hospital operated by Munson had an opening for an anesthesia service provider. Plaintiff contacted an employee of the hospital, who confirmed that the hospital was actively looking to fill such a position. Plaintiff expressed interest in the position.

16. The hospital employee, however, told Plaintiff that he could not be considered for the position because of an agreement between Munson and TAA that prohibited Munson from

hiring any TAA employees to work for any Munson facility while employed by TAA or for a period of one year after leaving TAA.

17. The hospital employee explained that the CEO of the hospital had directly provided the details of the agreement to Munson recruiters.

18. Plaintiff spoke to other Munson human resources employees, who affirmed the existence of the agreement.

Effects of No-Poach Agreements

19. Competition in labor markets is hindered by imperfect information about supply and demand. Unlike commodity markets where the near instantaneous reporting of market-wide demand and supply determines a single market price, participants in the labor market must individually seek out job opportunities and make difficult judgments about their ability to negotiate terms and conditions of employment with no, limited, or opaque information about employer demand and competition from other job seekers. This is particularly true for positions like those for anesthesia service providers in medical care facilities, that require specialized education, professional certification, and skill and experience, because there are few openings and infrequent turnover. As a result, any limitation that prevents qualified applicants from seeking a job opening will not only give the employer the upper hand in any negotiation with prospective applicants but also force existing employees to remain employed for less compensation and benefits because there are no alternative positions available to counterbalance the employers' asymmetric knowledge of the market.

20. "Price discovery" refers to the process by which a market searches for prices when information about supply and demand is imperfect. The speed at which price discovery operates depends on the manner in which, and how rapidly, information is disseminated among employers

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