

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MS. RENAE MARABLE
5003 HUNT STREET, N.E.
APARTMENT 22
WASHINGTON, D.C. 20019

- AND -

MS. JANETTE ADAMS
7509 HARPERS DRIVE
FORT WASHINGTON, MARYLAND 20744

- AND -

MS. KATHLEEN MCDONALD
6105 BREEZEWOOD COURT
APARTMENT 204
GREENBELT, MARYLAND 20770

- AND -

MS. ZAKIYYAH MUHAMMAD
2656 BOWEN ROAD S.E.
APARTMENT 302
WASHINGTON, D.C. 20020

- AND -

MS. NANCY PRINCE
7807 WESTOVER LANE
CLINTON, MARYLAND 20735,

- AND -

MS. MONICA BROOKS
234 55TH STREET NE
WASHINGTON, DC 20019,

- AND -

MS. TRACEE TAYLOR
9316 WASHINGTON BLVD.
LANHAM, MARYLAND 20706,

*ON BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,*

PLAINTIFFS

v.

DISTRICT HOSPITAL PARTNERS, L.P.
D.B.A. GEORGE WASHINGTON UNIVERSITY HOSPITAL
901 23RD STREET, NW
WASHINGTON, D.C. 20037

DEFENDANT

Civil Action 1:01cv02361.

**THIRD AMENDED COMPLAINT
AND JURY DEMAND**

The Plaintiffs, on behalf of themselves and all others similarly situated, hereby allege the following:

I. PRELIMINARY STATEMENT.

1. Plaintiffs bring this action to challenge the race discrimination committed by District Hospital Partners, L.P., doing business as George Washington University Hospital (hereinafter "GWUH"), against African-American candidates for employment as Multi-Skilled Technicians at GWUH who were subjected to a screening test as a condition of employment. These candidates include GWUH employees who previously worked as Nursing Assistants, other GWUH employees, and external applicants. This action also challenges the Defendant's discrimination in requiring that former Nursing Assistant applicants to the MST position submit to and pass a ten-part training and testing program. The employment policies and practices of

LIPPMAN SEMSKER & SALB, LLC
7700 Old Georgetown Road, Suite 500
Bethesda, Maryland 20814
(301) 656-6905

GWUH complained of herein have the effect of denying employment or continued employment and equal compensation to qualified African-American employees and applicants in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Plaintiffs sue on behalf of themselves and a class of all similarly-situated African-American applicants to the position of Multi-Skilled Technician at GWUH and all present and former African-American Nursing Assistants who were employees of the Defendant GWUH at any time between July 28, 1998, and November 15, 1998.

II. JURISDICTION

2. This Court has subject-matter jurisdiction pursuant to 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1343(a)(4), and 28 U.S.C. § 1331. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by 42 U.S.C. § 2000e *et seq.*, providing for injunctive and other relief against, *inter alia*, racial discrimination in employment.

3. This Court has personal jurisdiction over the defendant GWUH because it does business and is headquartered in Washington, D.C.

III. VENUE.

4. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. §§ 1391(b) & (c). GWUH's principal place of business is located in the District of Columbia and a substantial part of the unlawful acts set forth below occurred in this district.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

5. Plaintiffs have exhausted their administrative remedies pursuant to 42 U.S.C. § 2000e-5(f)(3).

6. Plaintiff Marable filed a timely charge of discrimination on her own behalf and on behalf of all named Plaintiffs with the United States Equal Employment Opportunity Commission on or about April 2, 1999, complaining of the acts which give rise to this lawsuit.

7. On August 14, 2001, Plaintiffs' counsel, on behalf of Plaintiffs, received a notice of her right to sue within 90 days, and this suit is timely brought on behalf of Marable, all other named Plaintiffs, and on behalf of themselves and all others similarly situated.

V. PLAINTIFFS.

8. Plaintiff Renae Marable was a Nursing Assistant until she was terminated on November 15, 1998, because the Nursing Assistant job she held was eliminated and she failed to complete the Multi-skilled Technician training. Ms. Marable passed seven of the ten tests before failing the Gastro-Intestinal module. Ms. Marable had been employed by GWUH for approximately ten years. Ms. Marable passed the math, reading, and writing tests which were a prerequisite to taking the Multi-skilled Technician training course.

9. Plaintiff Jeanette Adams was a Nursing Assistant until she was terminated on November 15, 1998, because the Nursing Assistant job she held was eliminated and she failed to complete the Multi-skilled Technician training. Ms. Adams did not pass the math, reading, and writing tests which were a prerequisite to taking the Multi-skilled Technician training course.

Ms. Adams had been employed by GWUH for approximately 25 years at the time of her termination.

10. Plaintiff Kathleen McDonald was a Nursing Assistant until she was terminated on November 15, 1998, because the Nursing Assistant job she held was eliminated and she failed to complete the Multi-skilled Technician training. Ms. McDonald did not pass the math, reading, and writing tests which were a prerequisite to taking the Multi-skilled Technician training course. Ms. McDonald had been employed by GWUH for approximately ten years at the time of her termination.

11. Plaintiff Zakiyyah Muhammad was a Nursing Assistant until she was terminated on November 15, 1998, because the Nursing Assistant job she held was eliminated and she failed to complete the Multi-skilled Technician training. Ms. Muhammad passed the math, reading, and writing tests which were a prerequisite to taking the Multi-skilled Technician training course, but did not pass all of the tests required pursuant to the Multi-skilled Technician training. Ms. Muhammad had been employed by GWUH for approximately five years.

12. Plaintiff Nancy Prince was a Nursing Assistant until she was terminated on November 15, 1998, because the Nursing Assistant job she held was eliminated and she failed to complete the Multi-skilled Technician training. Ms. Prince did not pass the math, reading, and writing tests which were a prerequisite to taking the Multi-skilled Technician training course. Ms. Prince had been employed by GWUH for more than five years at the time of her termination. Ms. Prince became employed as a part-time Nursing Assistant in GWUH's Float Pool after she was terminated from her position as a regular full-time Nursing Assistant.

13. Plaintiff Monica Brooks was an external candidate for the position of Multi-Skilled Technician. She failed the Defendant's screening test on or about March 5, 1999.

14. Plaintiff Tracee Taylor was an external candidate for the position of Multi-Skilled Technician. She failed the Defendant's screening test on or about October 23, 2002.

VI. DEFENDANT.

15. George Washington University Hospital is the trade name of District Hospital Partners, L.P. Defendant District Hospital Partners, L.P., doing business as George Washington University Hospital, is a for-profit business located in and doing business in the District of Columbia. District Hospital Partners, L.P., doing business as George Washington University Hospital, is an employer and was the Plaintiffs' employer within the meaning of Title VII of the Civil Rights Act of 1964.

VII. CLASS ACTION.

16. This action is brought by the Plaintiffs as a class action pursuant to 42 U.S.C. § 2000e *et seq.*, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all African-American candidates for employment as Multi-Skilled Technicians at GWUH who were subjected to a screening test as a condition of employment and all present and former African-American Nursing Assistants who were employees of the Defendant GWUH at any time between July 28, 1998, and November 15, 1998.

17. This action is brought by the Plaintiffs as a class action pursuant to 42 U.S.C. § 2000e *et seq.*, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all African-American candidates for employment as Multi-Skilled Technicians at GWUH who were subjected to a screening test as a condition of employment and all present and former African-American Nursing Assistants who were employees of the Defendant GWUH at any time between July 28, 1998, and November 15, 1998.

18. Defendant engaged in employment practices that emanate from a common plan or scheme that uniformly governed all applicants for the position of Multi-Skilled Technician throughout its facility. Defendant's employment practices affected the rights of members of the class throughout its facility by limiting and classifying black employees in ways which deprive them of equal employment opportunities and otherwise effect their status, compensation, and benefits as employees because of their race. Under the aforesaid circumstances, the common interests of the class are such that any interest of the individual members of the class is outweighed by the desirability of concentrating the controversy in a single forum, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy.

19. Plaintiffs request that the Court certify a class consisting of all African-American candidates for employment as Multi-Skilled Technicians at GWUH who were subjected to a screening test as a condition of employment and all African-American Nursing Assistants who were employees of the Defendant GWUH at any time between July 28, 1998, and November 15, 1998, including those former Nursing Assistants who were subjected to a training course following their successful completion of the screening test.

20. This action is properly commenced as a class action under Rule 23(a) because the requirements of this Rule are met, as explained in Paragraphs 19 through 22.

21. The class members are sufficiently numerous to make joinder of all members impracticable. Upon information and belief, GWUH employed approximately one hundred twenty-five African-American Assistant Nurses. Upon information and belief, greater than 300 individuals applied be MSTs at GWUH.

22. The claims alleged on behalf of the Plaintiffs raise questions of law or fact common to the class. These common questions include, but are not necessarily limited to, the following:

- a. whether the requirement that Nursing Assistants request a transfer to become a Multi-skilled Technician and thereby avoid termination disproportionately negatively affected the terms and conditions of African-American employees, in violation of Title VII;
- b. whether the math, reading, and writing tests disproportionately negatively affected the terms and conditions of African-American applicants, in violation of Title VII;
- c. whether the math, reading, and writing screening test was administered even though there was insufficient business necessity to merit it, in violation of Title VII;
- d. whether the putative business reasons for testing the candidates' math, reading, and writing skills could have been met through other means, in violation of Title VII;
- e. whether the examinations provided at the end of each of the ten classes in the Multi-skilled Technician training disproportionately negatively affected the terms and conditions of African-American employees, in violation of Title VII;
- f. whether the putative business reasons for testing the candidates' knowledge at the end of each of the ten classes in the Multi-skilled Technician training could have been met through other means, thereby violating Title VII;

- g. whether the subject matter of the ten classes in the Multi-skilled Technician training accurately reflected the tasks performed by the Multi-skilled Technicians; and
- h. whether the tasks performed by Multi-skilled Technicians were materially different from the tasks performed by the Nursing Assistants.

23. The claims alleged on behalf of plaintiffs are typical of those of the class. All of the claims arise from GWUH's policies pursuant to which Defendant required that all applicants to the position of Multi-Skilled Technician were required to take and pass math, reading, and writing screening tests in order to be considered for employment and pursuant to which Defendant terminated the employment of all Nursing Assistants and instituted a policy requiring that all Nursing Assistants employed as of July 28, 1998, (a) complete a Request to Transfer form within two weeks; (b) pass math, reading, and writing screening tests; (c) attend a ten-week training course; and (d) pass ten examinations during the training course.

24. The class representatives will adequately and fairly protect the interest of the class because they have the same interests as the class and no conflicts exist within the class. The class counsel will adequately and fairly protect the interest of the class because they are competent and experienced lawyers specializing in employment discrimination cases.

25. This class action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(2) because the Defendant has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

26. The class action is also properly maintainable pursuant to Federal Rule of Civil Procedure 23(b)(3) because the questions of law and fact common to members of the class

predominate over questions affecting only individual members and a class action is superior to other available methods for the fair and efficient resolution of this controversy.

VIII. FACTUAL ALLEGATIONS.

27. Prior to November 1998, GWUH employed approximately one hundred twenty-five Nursing Assistants.

28. The Nursing Assistants performed basic nursing skills as assistants to and supervised by registered nurses. Nursing Assistants' job responsibilities included taking vital signs, collecting stool and urine specimens, explaining to patients how to use spirometry equipment, recording patient intakes and outputs, bathing patients, assisting with colostomy care, and the like. In addition, some of the Nursing Assistants performed other job duties from time-to-time, such as inserting Foley Catheters, changing dressings, and testing blood-glucose levels. Many of the Nursing Assistants had participated in various classes to improve their skills, including gaining certification as Nursing Assistants and learning particular job-related skills.

29. The Nursing Assistants are almost exclusively African-American women. Upon information and belief, approximately 95% of the Nursing Assistants were African-American, and virtually all of the remaining 5% were other minorities. Upon information and belief, only a couple of Nursing Assistants were Caucasian.

30. In July 1998, GWUH notified all Nursing Assistants that it would be terminating their employment effective November 15, 1998. At the same time, GWUH created a new position called Multi-skilled Technician (hereinafter "MST"). GWUH required if a Nursing Assistant wished to become an MST, she must (a) complete a Request to Transfer form within

approximately two weeks; (b) pass three examinations; (c) attend a Multi-skilled Technician training course; and (d) pass examinations during the training course.

31. Before a Nursing Assistant was permitted to take the Multi-skilled Technician training course, she was required to pass three preliminary written examinations. One examination tested basic arithmetic, another tested reading comprehension, and the third examination tested writing. The passing grade for all three examinations was fixed arbitrarily at eighty.

32. The nominal purpose of the tests was to ascertain whether the Nursing Assistant possessed certain qualifications which GWUH claimed would be necessary in order to complete the Multi-skilled Technician training. In fact, the skills tested by the pre-training examinations were not reasonably related to the training or the job responsibilities of the MST position.

33. The Defendant's own validation study established that the some of this testing had a disparate impact on African-American candidates.

34. Virtually all of the Nursing Assistants took the math, reading, and writing examinations. Approximately three-quarters of them failed to pass all three tests.

35. After the Nursing Assistant passed the math, reading, and writing examinations, she was required to attend the Multi-skilled Technician training course, consisting of ten classes. Each class, about eight hours long, would end with a written examination.

36. Approximately one-quarter of the Nursing Assistants failed to pass all of the ten weekly tests.

37. The examinations during the training course included testing in skills unrelated to the actual job responsibilities of the MST position. For example, though the Gastro-Intestinal test

covered tube feeding, the MSTs are not now performing tube feeding as part of their responsibilities.

38. In addition to the Nursing Assistants who applied to be MSTs, several hundred other individuals, many of whom are African-American, have applied to be MSTs and have been obligated to take the math, reading, and writing screening tests.

39. The MSTs are performing the same tasks that were required of Nursing Assistants. When the position was first created, MSTs were assigned to perform only a few additional tasks, such as doing EKGs, that were not performed by Nursing Assistants. However, those few additional tasks were not done by all of the MSTs and they were rarely done by MSTs at all. Most of the additional tasks not performed by Nursing Assistants but which were once performed by MSTs have been discontinued, such as drawing blood. Upon information and belief, MSTs performing these additional tasks caused injury to patients. Upon information and belief, the injuries to patients was a factor in Defendant's decision to terminate the MSTs' performance of those tasks.

40. Prior to eliminating the Nursing Assistant positions, GWUH assigned three Nursing Assistants to each floor during each shift. After the Nursing Assistant positions were eliminated, the Nursing Assistants were replaced with a like number of MSTs. When MSTs are unavailable, a Nursing Assistant from the Float Pool is assigned to replace the MST. On some occasions, GWUH hires Nursing Assistants and MSTs from independent agencies. Nursing Assistants working in the Float Pool are now called Central Service Associates.

41. Many of the Nursing Assistants possess medical certificates attesting to their basic medical skills. In many instances, the Nursing Assistants have been employed by Defendant for

many years. A substantial number of nurse assistants who did not pass Defendant's tests were in fact highly qualified for the position because they possessed the necessary skills.

42. Only those Nursing Assistants who completed the Request to Transfer form, passed the two pre-training examinations, attended the training course, and passed the examinations during the training course were permitted to become MSTs.

43. The Defendant's requirements have had a disparate impact on African-American employees of GWUH.

44. GWUH has employed many of the Nursing Assistants who failed the as Multi-skilled Technician examinations as part-time Nursing Assistants to work in the Float Pool. Many Nursing Assistants declined to work for GWUH in the Float Pool because GWUH informed them that the assignments would only last two months; in fact, the assignments continue to this day. These part-time positions offered no fixed hours and no fringe benefits, including health insurance, life insurance, paid holidays and vacations, pensions, and retirement matching funds. From time-to-time, these employees have been employed on a full-time basis because of the continuing need for the medical care provided by the terminated Nursing Assistants. Upon information and belief, one or more part-time Nursing Assistants in the Float Pool have been given permanent employment as Nursing Assistants.

45. The MSTs spend most of their work time performing the same tasks that the Nursing Assistants had performed. In fact, upon information and belief, many MSTs who were hired from outside the pool of Nursing Assistants left GWUH because of dissatisfaction with the job responsibilities, which closely resembled the duties of Nursing Assistants.

46. GWUH has approximately thirty MSTs, half of whom had been Nursing Assistants.

47. Persons who were hired as MSTs who were not Nursing Assistants were not required to attend the ten-week training course.

COUNT ONE

**DISPARATE IMPACT DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE
CIVIL RIGHTS ACT OF 1964**

48. Plaintiff incorporates Paragraphs 1 through 46 of this Complaint as if fully alleged herein.

49. In July 1998, GWUH created a policy abolishing all Nursing Assistant positions at GWUH.

50. In July 1998, GWUH imposed a requirement that all Nursing Assistants (a) complete a Request to Transfer form within approximately two weeks; (b) pass three examinations testing their math, reading, and writing skills; (c) attend a ten-week training course; and (d) pass ten examinations during the training course. GWUH has also required that all applicants to the position of MST submit to and pass math, reading, and writing screening tests. These requirements have a disparate impact on African-American employees.

51. GWUH's discriminatory practices described above have denied African-American former Nursing Assistants continued employment to which they are entitled, and applicants to the position of MST future employment to which they are otherwise entitled, which has resulted in the loss of past and future wages and other job benefits.

52. These employment practices violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a. Declare that the practices described in this Complaint existed at GWUH and that they are unlawful;
- b. Issue a permanent injunction prohibiting the Defendant, its officers, agents, employees and successors, from engaging in the discriminatory employment practices complained of herein;
- c. Issue a permanent mandatory injunction requiring that Defendant adopt employment practices in conformity with the requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*;
- d. Reinstate the Plaintiffs in the positions that they previously held or in substantially identical positions;
- e. Award back pay and other job benefits sufficient to make Plaintiffs and the Class whole;
- f. Award compensatory and punitive damages appropriate to the proof at trial;
- g. Award reasonable attorneys' fees and costs, including expert fees, pursuant to 42 U.S.C. § 2000e and 42 U.S.C. § 1988; and
- h. Order such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their under-signed counsel, herewith demands a trial by jury on all issues.

Respectfully submitted,

/s/
S. Micah Salb, #453197
Richard H. Semsler, #413886
LIPPMAN, SEMSKER & SALB, LLC
7700 Old Georgetown Road
Suite 500
Bethesda, Maryland 20814
(301) 656-6905

Attorneys for Plaintiff

LIPPMAN SEMSKER & SALB, LLC
7700 Old Georgetown Road, Suite 500
Bethesda, Maryland 20814
(301) 656-6905