

Minnesota Businesses Who Train Certified Nurse Assistants File Federal Lawsuit Against Minnesota State College and Universities for Predatory Pricing Scheme

December 7, 2023. *Minneapolis, MN.* Nine Minnesota small businesses who train certified nurse assistants (CNA) filed a federal lawsuit against Minnesota State Colleges and Universities Board of Trustees (MNSCU) and other public officials for a predatory pricing scheme. The nine businesses allege that MNSCU is providing free CNA training causing devastating and bankrupting effects on their small businesses. The plaintiffs claim that the defendants' conduct violates the Sherman Anti-trust Act, the U.S. Constitution's Equal Protection Clause and Minnesota's constitutional ban on special laws when general laws are possible.

Plaintiffs' attorney Erick Kaardal stated, "Congratulations to the CNA-training businesses for getting this lawsuit filed to save their businesses from the MNSCU's predatory pricing scheme. MNSCU's actions of providing free CNA training is an outrageous violation of federal and state law. Putting Minnesota's small business out of business is not good business for MNSCU."

Decades ago, federal law changes required CNA training of about 75 hours for nursing home workers. Under the federal law, Minnesota approves nurse aide training programs. Minnesota hosts a website page, How to Start a Nurse Aide Training Competency Evaluation Program (NATCEP), at: <https://www.health.state.mn.us/facilities/providers/nursingassistant/starttrainprog.html>. To offer a state-approved CNA training program in Minnesota, an organization must submit to the Minnesota Department of Health Nursing Assistant Registry a Nurse Aide Training and Competency Evaluation Program (NATCEP) Provisional Application Form. These approval requirements are the same for public and private organizations. All the plaintiffs have gone through this process and obtained full approval from the Minnesota Department of Health Nursing Assistant Registry.

Each plaintiff has a state-approved business which provides CNA training. As a business, each plaintiff charges on average about \$1,000 to \$1,500 for CNA training. The businesses have been profitable until the governmental defendants started offering the CAN training free statewide.

Since 2021, the state government has provided CNA training for free at college, university and high school campuses—devastating and bankrupting the plaintiffs' businesses. First, using COVID pandemic funding, MNSCU and state's colleges, universities and high schools began providing free, no cost, CNA training statewide. The first grant under the American Rescue Plan (ARP) State Fiscal Recovery Funds was for Fiscal Year 2022. The Grant Agreement Amount was \$3,168,809.00. The second grant under the COVID-19 Management Costs Fund was for Fiscal Year 2023. The Grant Agreement Amount was \$2,445,325.00.

The state Office of Higher Education (OHE) entered into agreements, essentially a partnership, with the following Minnesota State Colleges and Universities and Minnesota State HealthForce Center of Excellence to provide free CNA training on their respective campuses:

- Alexandria Technical and Community College, Alexandria; FY22 and FY23
- Anoka Ramsey Community College, Coon Rapids; FY22 and FY23
- Anoka Technical College, Anoka; FY22 and FY23
- Central Lakes College, Brainerd; FY22
- Central Lakes College, Staples; FY22
- Century College, White Bear Lake; FY22 and FY23

- Dakota County Technical College, Rosemount; FY22 and FY23
- Hennepin Technical College, Eden Prairie; FY22 and FY23
- Minneapolis Community and Technical College, Minneapolis; FY22 and FY23
- Minnesota North College, Grand Rapids; FY22 and FY23
- Minnesota North College, Hibbing; FY22
- Minnesota North College, Virginia; FY22
- Minnesota State College Southeast, Red Wing; FY22 and FY23
- Minnesota State College Southeast, Winona; FY22
- Minnesota State Community and Technical College, Moorhead; FY22 and FY23
- Minnesota State University Mankato, Mankato; FY23
- Minnesota West Community and Technical College, Granite Falls; FY22 and FY23
- Minnesota West Community and Technical College, Worthington; FY22
- Northland Community and Technical College, East Grand Forks; FY22 and FY23
- Pine Technical and Community College, Pine City; FY22 and FY23
- Ridgewater College, Hutchinson; FY22 and FY23
- Ridgewater College, Willmar; FY22
- Riverland Community College, Albert Lea; FY22 and FY23
- Riverland Community College, Austin; FY22 and FY23
- Riverland Community College, Owatonna; FY22
- Rochester Community and Technical College, Rochester; FY22
- Saint Paul College, St. Paul; FY22 and FY23
- South Central College, Mankato; FY22 and FY23
- St. Cloud Technical Community College, St. Cloud; FY22 and FY23

OHE also entered into agreements, essentially a partnership, with the following Minnesota high schools and Minnesota State HealthForce Center of Excellence to provide free CNA training on their respective campuses:

- 916 Career and Technical Center, St. Paul
- Alexandria High School, Alexandria
- Anoka-Hennepin STEP, Anoka
- Browerville High School, Browerville
- Elk River High School, Elk River
- Forest Lake High School, Forest Lake
- Isle School District, Isle
- Mankato West High School, Mankato
- Marshall Area Technical and Educational Center, Marshall
- Minnesota North College (Mesabi Range College), Virginia
- Minnesota West Community and Technical College, Granite Falls
- Nevis High School, Nevis
- Roseau High School, Roseau
- Rosemount High School, Rosemount
- Rushford Peterson High School, Rushford
- Spring Lake Park High School, Spring Lake Park
- St. Louis Park High School, St. Louis Park
- West Central Area High School, Barrett
- Wright Technical Center, Buffalo

By mid-February 2023, the State of Minnesota had trained at no cost 1,737 individuals to enter the workforce as CNAs. Participants from Minnesota and neighboring states received free training in programs throughout the state.

Then, in 2023, the Minnesota state legislature enacted appropriation law to continue to fund colleges, universities and high schools providing free CNA training, devastating and bankrupting plaintiffs' businesses. The appropriation law, 2023 Minn. Sess. Law Serv. ch. 41 (H.F. 2073) art. 1, § 2, subd. 42, appropriates money to the Board to distribute to provide free CNA training at the state's colleges, universities and high schools in the future:

Subd. 42. Next Generation Nursing Initiative \$3,000,000

For transfer to the Board of Trustees of the Minnesota State Colleges and Universities for HealthForce Minnesota to coordinate and implement the Next Generation Nursing Assistant Training Program for the recruitment and training of students to become certified nursing assistants. The program must use a "free up-front" model for covering the student costs. This appropriation may also be used for marketing and outreach across the state and covering the costs for retraining, retesting and refresher courts. The appropriation is available until June 30, 2025.

The appropriation law continues to fund colleges, universities and high schools providing free CNA training into the future.

Since plaintiffs are ineligible to receive funds, the colleges, plaintiffs' businesses are devastated and bankrupted by the government's free CNA training. The appropriation law, like the earlier rounds of funding, crowds out private provision of CNA training because students will be unwilling to pay for a service that they can obtain for free. The defendants' provision of free CNA training devastates and bankrupts the plaintiffs' businesses which are approved by the Minnesota Department of Health Nursing Assistant Registry.

Based on these facts, the plaintiffs claim that the defendants' conduct violates the Sherman Anti-trust Act, the U.S. Constitution's Equal Protection Clause and Minnesota's constitutional ban on special laws when general laws are possible. The plaintiffs' federal lawsuit seeks prospective declaratory and injunctive relief against the defendants' predatory pricing scheme.

Contact:

Erick G. Kaardal
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis MN 55402
612-341-1074
612-465-0927 (direct)