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 1                    UNITED STATES DISTRICT COURT
                     FOR THE DISTRICT OF NEW JERSEY
 2                      Civil No. 11-6377(JLL)

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      SHARON L. DANQUAH, et al.,      :     TRANSCRIPT OF
 5                                    :      PROCEEDINGS
            Plaintiffs,              :
 6                                    :     December 22, 2011
            -vs-                      :
 7                                    :
      UNIVERSITY OF MEDICINE AND      :
 8    DENTISTRY OF NEW JERSEY (UMDNJ):
      et al.,                         :
 9                                    :
            Defendants.              :     Newark, New Jersey
10                                    :
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15    B E F O R E:

16                THE HONORABLE JOSE L. LINARES,
                  UNITED STATES DISTRICT COURT JUDGE
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          Pursuant to Section 753 Title 28 United States Code, the
21    following transcript is certified to be an accurate record
      as taken stenographically in the above-entitled proceedings.
22
      s/Phyllis T. Lewis, CCR, CRCR
23    - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -
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24    Official Court Reporter - United States District Court
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1        THE CLERK:  All rise.
2        THE COURT:  Thank you.
3        Please be seated.
4        Good afternoon.
5        I want to put a little bit of a procedural
6   background on the record, but first let's get everyone's
7   appearance on the record.
8        This is in the matter of Danquah versus University
9   of Medicine and Dentistry of New Jersey, Civil Action No.
10  11-6377.
11       Counsel, your appearances for the record, please.
12       MR. STRATIS:  Good afternoon, your Honor.
13       Demetrios Stratis on behalf of the plaintiffs.
14       Seated to my right is Matthew Bowman, who is
15  admitted in this matter pro hac vice.  Also seated to my
16  right is Catherine Foster, who has also been admitted last
17  week by Judge Hammer's order, and also part of our
18  litigation team is Steve Aden.
19       THE COURT:  Good afternoon.
20       Thank you.
21       MR. DEUTSCH:  May it please the Court, Edward
22  Deutsch from Mc Elroy, Deutsch, Mulvaney & Carpenter, John
23  Peirano from the same firm, and James Patterson from the
24  same firm.
25       THE COURT:  Good afternoon, gentlemen.
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1        By way of background, the plaintiffs filed a
2   complaint in this matter back on October 31st, 2011.  In
3   that complaint it alleged three causes of action, a
4   violation of the church amendment and Section 1983, a
5   violation of the 14th Amendment of the United States
6   Constitution, and a violation of the New Jersey law, the
7   conscience statute.  They also filed an application for a
8   temporary restraining order, as well as a preliminary
9   injunction.
10       As a result of certain communications from the
11  defendants' counsel with regard to what the hospital was
12  willing to do in the interim and based on the
13  representations made therein, I issued a temporary
14  restraining order, and I scheduled this matter for a hearing
15  today.  Originally the hearing was scheduled for another
16  date, but then it was adjourned until today.  I think the
17  initial return date was back on November 18th.
18       We were here today ready to proceed to the
19  arguments in this matter, but I thought it would be in
20  everyone's best interest, both of the plaintiff nurses, as
21  well as the hospital, that I have a conversation with
22  counsel in an attempt to reach an amicable resolution that
23  would address both the concerns of the plaintiffs as well as
24  the concerns of the hospital.
25       The Court is well aware and cognizant of the
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1   plaintiffs' religious beliefs and how strongly they feel
2   about this case and is equally aware of the concerns of the
3   hospital, the mission of the hospital of providing
4   appropriate medical care and the desire to keep providing
5   adequate medical care to our community, so both things had
6   to be balanced.  I thought it best before I had to make a
7   decision that forced me to make a ruling one way or the
8   other, that I would try to accommodate that the best I could
9   through engaging the parties in a dialog.
10       After a lengthy dialog, and I must say through a
11  lot of cooperation from the hospital and plaintiffs'
12  counsel, I think we have reached a situation where an
13  agreement has been arrived at.  Because of the how important
14  this matter is to the parties, we are going to memorialize
15  the agreement on the record today, and I am going to retain
16  jurisdiction of this matter to ensure that the terms of the
17  agreement are in fact followed.
18       Now, having said that, as I understand it, and I am
19  going to have -- Mr. Deutsch, is it going to be you who is
20  going to speak on behalf of the hospital?
21       MR. DEUTSCH:  Yes, your Honor.
22       THE COURT:  As I understand it, in an effort to
23  amicably resolve this matter, the hospital is willing to --
24  and, Mr. Bowman, I will give you an opportunity as well --
25       MR. BOWMAN:  Okay.
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1   THE COURT: -- is willing to allow the plaintiff
2 nurses to stay in the same day surgery unit and not have to
3 assist in any manner, and I am going to let you set forth
4 what that means, in termination of pregnancy cases, with the
5 exception of emergency situations, where it is a true
6 emergency, and where there is no non-objecting medical
7 personnel present when the emergency occurs, and even under
8 those circumstances, the only involvement of the objecting
9 plaintiffs would be to care for the patient until such time
10 as a non-objecting person can get there to take over the
11 care.
12   I thought that with that caveat, Mr. Bowman, and by
13 that I mean the fact if there is a non-objecting person
14 there, they have to do it, not your clients, and with the
15 caveat that they only have to do it until such time as a
16 non-objecting person gets there, and with the caveat that I
17 am retaining jurisdiction to ameliorate any concerns you
18 might have about what is not an emergency, that that was an
19 appropriate resolution.
20   I know that the plaintiffs had some concerns with
21 the issue of emergencies, you know, what exactly does that
22 mean, and how that could be used.
23   I am convinced, and I am going to have Mr. Deutch
24 make certain representations on the record, but I am
25 convinced from the dialogue with both counsel, that it is

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1 not the intent or the desire of the hospital to use this
2 agreement in any way as a pretext to then come up with some
3 kind of a non-emergency situation, call it an emergency, and
4 have your clients have to get involved in the termination of
5 pregnancy at some level.
6   Having said that, in any event, I am retaining
7 jurisdiction in the event that you feel that that has truly
8 happened.
9   What I am not going to do today, and I have said
10 that to you, Mr. Bowman, and I think I said it to Mr.
11 Deutsch as well, is to try to come up with a definition of
12 all emergencies today or at any time, because I think that
13 would be medically impossible. Emergencies come in many
14 shapes and forms. You know, it could be a cardiac arrest
15 situation, or it could be a cerebral hemorrhage. You could
16 have someone fall off of a chair and break a leg. I can't
17 even imagine, as I sit here today, how many I could name, so
18 it would really be impossible.
19   It is also understood, as I view it from the
20 agreement of the parties, that the mere act of bleeding at
21 some level doesn't necessarily constitute an emergency. It
22 is obvious to this Court that when a pregnancy is being
23 terminated in the manner in which the papers indicate the
24 procedure is done, there is to be expected some level of
25 bleeding at some point, and not every bleeding constitutes

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1 an emergency. However, I could see situations where it
2 could be, but that is an issue for another day. That is my
3 general understanding of what the agreement is.
4   I am now going to have Mr. Deutsch set forth on the
5 record whether or not what I just said accurately
6 encompasses the agreement and what the hospital is willing
7 to do, and I want you to address the issue of staffing and
8 anything else that you want to put on the record with regard
9 to the potential pretextural emergencies and all of that,
10 understanding that I am going to retain jurisdiction to make
11 sure that the settlement hopefully gets carried forward as
12 intended by the parties.
13   MR. DEUTSCH: Your Honor, may I have one moment,
14 please?
15   THE COURT: You may.
16   (Counsel Confer)
17   MR. DEUTSCH: Thank you, your Honor.
18   I think you have very adequately set forth the
19 agreement between the parties, between the hospital and Mr.
20 Bowman's clients.
21   I represent to the Court that the hospital has no
22 present -- no intention of using this agreement in any
23 pretextural manner. They hired four additional nurses who
24 are non-objecting, as I understand it, to help the
25 situation, where the plaintiffs in this case do not have to

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1 undertake any activities from checking people in, to taking
2 vital signs, administering medication, or any other normal
3 procedure relative to termination of pregnancy patients.
4   Your statement relative to emergencies is accurate.
5 I think reasonable people in the medical profession will
6 know what a real emergency is and will act accordingly.
7   The procedures take place, as I understand it, on
8 Wednesdays and Fridays, and that the hospital is going to
9 make its best efforts to have non-objecting people
10 available, so that the non-availability issue can be as moot
11 as it possibly can.
12   THE COURT: All right.
13   Mr. Bowman, did I accurately --
14   MR. DEUTSCH: I'm sorry, your Honor.
15   The other issue, your Honor, that we spoke of is
16 that you are correct, the intention is to keep these
17 plaintiffs in the same day surgery. In the future if there
18 is any reason for movement, the hospital will abide by the
19 letter in applying the union contract, that they are bound
20 by it.
21   THE COURT: Mr. Bowman, did I accurately reflect
22 the spirit and the letter of the agreement?
23   MR. BOWMAN: Your Honor, I had a couple of notes on
24 that. I think that what you said is generally my
25 understanding as well.

1   Our understanding is -- well, just at the outset,
2 my clients have never taken the position that if they are
3 walking by a room and a woman is in an emergent situation,
4 that they are not going to take the necessary action to
5 protect her.
6   The question is: On routine abortion cases, do
7 they have to do duties.
8   That has always been the issue in the case.
9   Our understanding is that the agreement that we
10 have come to today includes that the hospital would staff
11 the abortion cases with willing nurses, that -- so, in other
12 words, the hospital couldn't just say, "Well, we don't have
13 enough staff today, so you are on the case, because it is
14 emergency, we need staff," so that they would staff the
15 cases.
16   At the same time they wouldn't transfer, not only
17 transfer out my clients, but reduce their hours and say,
18 "Well, because we hired these new nurses, now we have too
19 many, and you can't work as many hours a week as you have
20 been. We are going, you know, to change your duties and
21 schedule," and all of these things that are adverse that
22 we've proposed.
23   Part of the agreement is that as a result of my
24 clients being not willing to work on abortion cases, that
25 they are not going to suffer any of these adverse penalties.

1   THE COURT: Well, I think that the important words
2 there were that as a result of this case. I am not going to
3 today make a blanket ruling on how the hospital is going to
4 run its personnel issues for years to come. I mean, your
5 clients are part of a collective bargaining agreement, and
6 they have rights reserved within that collective bargaining
7 agreement. Obviously, if there is evidence that they are
8 being somehow castigated in some form for having filing the
9 lawsuit, that is a story for a different day.
10   But you are correct, my understanding, Mr. Deutsch,
11 is that they will be allowed to stay, at least the present
12 plan is that they will be allowed to stay as they were in
13 the same day surgery unit with the only change really being
14 that they don't have to participate in the termination of
15 pregnancies at any level.
16   Is that correct?
17   MR. DEUTSCH: The present intention is to keep them
18 in same day surgery, but in the future at some point, if
19 things change, and staffing had to be changed years from
20 now, sometime in the future, it would be done in accordance
21 with the collective bargaining agreement.
22   I can't say that they will be in same day surgery
23 for the next 20 years. It just can't happen --
24   THE COURT: Mr. Bowman, it would be impossible for
25 me to police that.

1   Now, the other concern, though, that Mr. Bowman
2 raised, and I think you said this, but I just wanted to
3 clarify it, you are going to staff the days when these
4 terminations of pregnancy are done with non-objecting
5 people, so that it is not the case that only objecting
6 people are there, and then by definition everything is an
7 emergency.
8   MR. DEUTSCH: I think the best way to say it is
9 that the hospital is going to make the best efforts to have,
10 as Mr. Bowman said, the willing people or the non-objecting
11 people, the new hires and the remaining people who are not
12 objecting, best efforts to have those people available on
13 the days that these procedures take place to avoid the issue
14 of non-availability.
15   THE COURT: All right.
16   Anything else?
17   MR. BOWMAN: Yes.
18   And, your Honor, I think that that -- the point I
19 was making previously was so that we are in sort of a
20 different position than we were last week when Mr. Peirano
21 said that, well, once we put these four extra nurses in,
22 we have a surplus --
23   THE COURT: That is not what is being said today.
24 That has changed as a result of frankly my input with Mr.
25 Deutsch and his input to his client and the conversations

1 that went back and forth with the hospital. They have
2 changed I think their position to the position that I
3 suggested this morning, and I think you had accepted it.
4   MR. BOWMAN: I just wanted to put it on the record,
5 your Honor, to clarify that.
6   I think that your description of the emergency
7 issue is basically consistent with ours. Medical
8 professionals do know what a real emergency is. My clients
9 are medical professionals, and the issue here is not I am
10 going to do emergency abortions. There are no emergency
11 abortions in the outpatient surgery unit. The issue is I'm
12 walking by, there's nobody else available, and this woman is
13 in need for, you know, whatever reason, it is a real
14 emergency. My clients have never taken the position that I
15 am not going to help the women.
16   The real question was: Are you going to be
17 assigned to work on abortion cases, you are expected to work
18 on abortion cases, and I think --
19   THE COURT: We have taken care of that with this
20 agreement.
21   MR. BOWMAN: -- and with that, I think that we
22 have -- I think we could have the understanding here, unless
23 I stand corrected --
24   THE COURT: No. I don't have anything else.
25   What I am going to do is, and I think for your

1 clients' protection, as well as the protection of the
2 hospital, so everyone is on the same page, as I said to both
3 of you in my chambers, rather than have you go back and
4 forth negotiating something in writing, especially because
5 the emotions in this case have run so high, I am going to
6 issue an order of settlement, which embodies the
7 understanding of the parties, as I have just recited it.
8 　　　　I am going to indicate in there that the staffing
9 concerns, as indicated by counsel, that they are going to
10 have someone there.
11 　　　　I am going to indicate in there that the word
12 "emergencies," as understood in the agreement, are true
13 medical emergencies, and it is not going to be used as a
14 pretext.
15 　　　　I am going to include in there that even in that
16 situation, your clients only have to get involved in it in
17 the absence of the non-objecting people, and then only until
18 they show up.
19 　　　　I will keep jurisdiction, so in the event that that
20 were to happen, or that your clients breached the agreement,
21 or the hospital breached the agreement, that you then can
22 come back to me and resolve it.
23 　　　　I think under the circumstances this is the best
24 solution for everybody, and I want to thank both you and Mr.
25 Deutch who are the ones that I dealt with. I am sure

1 everybody else contributed.
2 　　　　By the way, I guess you should put on the record,
3 because you do have 12 clients, that you have the authority
4 to enter into this agreement on behalf of all of your
5 clients. I know that only two or three are here, and then
6 you had to go to the hospital to meet with the rest of them
7 at my request, so could you please indicate for the record
8 that you have the authority to enter into this agreement on
9 behalf of all of your clients?
10 　　　　MR. BOWMAN: Your Honor, I have spoken to each of
11 the 12. As our understanding is represented here, they have
12 agreed to that.
13 　　　　We have a lot of details in the agreement, and I
14 don't mean to belabor the point, but I think it also -- I am
15 not sure if in your most recent recital of what it would
16 include, it included that there wouldn't be adverse actions
17 taken against my clients on the basis of their objection, or
18 that they wouldn't have their hours reduced and whatnot,
19 with the recognition that this is not, you know, locking the
20 hospital into what the same day surgery is going to be for
21 the next 20 years. It's just a question of looking at the
22 staffing, as we discussed it, and we are in a different
23 position than we were last week, that that is also part of
24 it.
25 　　　　When Mr. Deutch recited some of the things, among

1 all of the things that would not be required of working on
2 cases, one thing that we did mention specifically was
3 training to do any thereof, so in other words, the things
4 that my clients wouldn't have to do on abortion cases, it is
5 my understanding that by virtue of the fact, they wouldn't
6 also have to go through training to do those things, and I
7 wanted to put that on the record.
8 　　　　Certainly, if I am incorrect about that, maybe you
9 can clarify it.
10 　　　　THE COURT: This is the day to clarify it.
11 　　　　MR. DEUTSCH: One second, your Honor.
12 　　　　(Counsel confer)
13 　　　　MR. BOWMAN: But I can say, if I didn't more
14 specifically say it, that I have spoken with all 12 of my
15 clients, and they all do agree with the agreement to the
16 extent that I'm expressing our understanding of it.
17 　　　　THE COURT: Thank you.
18 　　　　MR. PEIRANO: Your Honor, may I respond on behalf
19 of UMDNJ?
20 　　　　THE COURT: Yes.
21 　　　　MR. PEIRANO: Your Honor, with respect to the
22 training, the training to actually perform abortions,
23 obviously they do not have to do that. However, the duties
24 that they are being relieved from include duties that are
25 performed on other pre-op surgery patients and other post-op

1 surgery patients. So to the extent that that training is
2 for all nurses without regard to whether it is abortions or
3 not, if the hospital mandates that there be training for
4 that, we are not saying that they wouldn't have to go
5 through that training, Judge, for example, training on how
6 to take vital signs. I mean, you have to take vital signs
7 for every surgery. If they run training on that, they would
8 be required to do that, Judge.
9 　　　　THE COURT: Training that is necessary for other
10 medical procedures.
11 　　　　MR. PEIRANO: For all surgical -- that's absolutely
12 correct, your Honor.
13 　　　　THE COURT: Mr. Bowman, I assume you have no
14 objection to that.
15 　　　　MR. BOWMAN: That's right. We weren't suggesting
16 that they wouldn't have to do the duties in themselves --
17 　　　　THE COURT: The duties of a nurse in general, but
18 not specific duties dealing with termination of pregnancy,
19 right?
20 　　　　MR. BOWMAN: Yes.
21 　　　　The way the training happened before was, we are
22 actually taking you to an abortion patient, and here, do
23 this, do that and the other thing.
24 　　　　No one -- you know, we are obviously not objecting
25 to learning vital signs on a standard non-abortion patient,

1   or even to learning emergency care on that standard
2   non-abortion patient. That is not what I was suggesting
3   would be --
4   MR. PEIRANO: I just wanted that to be clear, and
5   one other clarification, Judge --
6   THE COURT: That is the reason why I wanted to go
7   on the record, because I wanted to clarify everything rather
8   than have you guys do it back and forth through letters,
9   which apparently hasn't been very fruitful in the past.
10   MR. PEIRANO: That's correct, Judge.
11   With respect to whether our position has changed as
12   far as staffing from last week, I do not agree that it has
13   changed measurably, your Honor.
14   Last week what our position was, if we hire four
15   new people to come in, and the census goes down, when the
16   census goes down, Judge, okay, there may not be a need for
17   20 nurses. Somebody may be transferred. But if that
18   occurs, Judge, it is all going to be under the position of
19   the collective bargaining agreement. There is no present
20   intention to do that, but we simply cannot predict the
21   future, your Honor.
22   THE COURT: Counsel, I think we said that, and I
23   don't want to create problems where there aren't any. I
24   think Mr. Bowman understands that. His concern is that as a
25   result of this case, you don't start taking adverse

1   employment action against his clients, right?
2   MR. BOWMAN: That's basically right, your Honor.
3   THE COURT: That's my understanding as well.
4   If you decide to transfer them later for other
5   reasons --
6   MR. PEIRANO: We have no objection to that, your
7   Honor.
8   MR. BOWMAN: The question we're raising is you look
9   at the 20 nurses and you say, these new four will do
10   abortions, and these 12 won't, so on that basis, on the
11   basis of that distinction, some of the 12 go out, and the
12   four stay in. That is where I understood us to be last
13   week, and that's where I understand us not to be this week.
14   MR. PERIRANO: Judge, if something like that
15   happens, that they believe is an adverse employment action,
16   as a result of them engaging in protected activity, you are
17   retaining jurisdiction, and it can be brought before the
18   Court.
19   THE COURT: I agree, because it's like the
20   definition of an emergency. We are not going to be sitting
21   here today trying to figure out in the event that they do
22   something, when they do it, is it going to be as a result of
23   this case. I mean, I am going to retain jurisdiction, so
24   that I can keep an eye on what is going on.
25   MR. BOWMAN: We are very glad you are doing that,

1   your Honor. For ten years there have been no situations
2   which required my clients' involvement, so if we are going
3   back to that basic situation, then we have no objection.
4   THE COURT: All right.
5   I want to thank both of you for working with the
6   Court in the amicable resolution of this matter.
7   I will issue an order that will set forth the
8   parameters of the agreement, as I understand it, and as you
9   indicated that you understand it today, and that will be
10   all.
11   I think that agreements like this in cases like
12   this do not come about easily because of the emotions
13   involved, and because any time you are dealing with a public
14   entity, it is not as though you are dealing with a single
15   client that you can get approval for things overnight.
16   There are procedures that entities like the
17   hospital have to go through and responsibilities in their
18   mission statement in terms of what they have to do, and
19   there are also issues with regard to potential medical
20   liability, if you leave things out like emergencies out of
21   the equation, you know, potential medical malpractice claims
22   and all other kinds of claims.
23   On the other hand, I understand the importance of
24   this issue to your clients, and I wanted to see if there was
25   a way to accommodate it, and I appreciate you talking to

1   your clients and getting everyone on the same page.
2   Mr. Deutsch, I appreciate the reasonableness in
3   which the hospital handled this situation in reaching where
4   we got today.
5   So with my thanks, this matter is now adjourned.
6   Thank you.
7   MR. DEUTSCH: Thank you, your Honor.
8   MR. PEIRANO: Thank you, your Honor.
9   MR. BOWMAN: Thank you, your Honor.
10   THE CLERK: All rise.
11   (Court adjourned.)
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