

AMERICAN SOCIETY OF ANESTHESIOLOGISTS **ANTITRUST COMPLIANCE STATEMENT**

The American Society of Anesthesiologists (“Society”) is a non-profit, national organization of physicians and other professionals engaged or interested in the practice of anesthesiology, pain medicine and critical care medicine, who are committed to its mission of advancing patient safety through improved quality, ethical behavior and discovery of new knowledge. The Society is organized to promote education, research, advocacy and communication in the field of anesthesiology.

The Society has a policy of strict compliance with federal and state antitrust laws. The antitrust laws prohibit agreements among competitors that restrain trade. Society members can be considered to be competitors for purposes of antitrust challenges even if their businesses or professional practices are not in the same geographic areas or in the same product lines or specialties. The penalties for violations of the antitrust laws are severe for medical societies and their members.

In all Society activities, each member, as well as Society staff, shall be responsible for following the Society’s policy of strict compliance with the antitrust laws. Society officers, directors, delegates, committee chairs, and executive staff shall ensure that this policy is known and adhered to in the course of activities pursued under their leadership.

General Antitrust Compliance Principles

- The Society is firmly committed to the principle of competition served by the antitrust laws, and good business judgment demands that every effort be made to assure compliance with all applicable federal and state antitrust laws and trade regulations.
- The Society will not become involved in the competitive business decisions of its individual members, nor will it take any action that would tend to restrain competition.
- Individual Society members must make business decisions on their own and without consultation with their competitors.
- Society members cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower, or stabilize prices or fees, allocate or divide up markets, or encourage or facilitate boycotts. *In general, however, an effort to influence the exercise of governmental power, be it through legislation, regulation or the courts, even for the purpose of gaining an anticompetitive advantage, does not create liability under the antitrust laws.*

Specific Rules of Antitrust Compliance

1. **The purpose and intent of the Society's policies and programs cannot be aimed at accomplishing anti-competitive objectives.** Society activities shall not be used for the purpose of bringing about, or attempting to bring about, any understanding or agreement, written or oral, formal or informal, expressed or implied, among competitors with regard to prices or fees, terms or conditions of sale or professional services, discounts, territories or customers.
2. **Society activities and communications shall not include discussion or actions, for any purpose or in any fashion, of prices or pricing methods or other limitations on either the timing of services or the allocation of territories, markets or patients in any way.** For example, any agreement by competitors to "honor," "protect," or "avoid invading" one another's geographic areas, practice specialties, or patient lists would violate the law. Likewise, Society members cannot come to understandings, make agreements, or otherwise concur on positions or activities that are directed at fixing prices, fees, payment or reimbursement levels. Even if no formal agreements are reached on such matters, discussions of prices, or market allocations followed by parallel conduct in the marketplace can lead to antitrust scrutiny or challenges. Members may, however, consult with each other and freely discuss the scientific, clinical and quality aspects of the practice of medicine.
3. **Society activities and communications shall not include discussion or actions, for any purpose or in any fashion, regarding any type of boycott or refusal to do business with those whose business practices the Society opposes.** For example, Society members cannot make agreements as to whether they will or will not enter into contracts with certain managed care organizations or other third party payors. Competitors may discuss policies or practices of payors, but must never threaten directly or indirectly to act jointly to enforce changes to those policies. Again, even if no formal agreements are reached, discussions of group boycotts followed by parallel conduct in the marketplace can lead to antitrust scrutiny or challenges.
4. **The Society shall not undertake any activity that involves exchange or collection and dissemination among competitors of any information regarding prices, pricing methods, cost of services or labor, or sales or distribution without first obtaining the advice of General Counsel.** For example, caution should be exercised in collecting data on usual and customary fees, managed care reimbursement levels, workforce statistics, and job market opportunities. While the mere collection of data on such matters is permissible if certain conditions are met, antitrust concerns may arise if the data become the basis for collective action.
5. **In accordance with the Society's Bylaws, the official spokesperson for the Society is the current President or a person officially designated by the President. Absent such a designation, all other Society members or staff, including Directors, other officers and Delegates of the Society must make clear that they are not speaking in their official capacity when they address antitrust-sensitive issues.** An association can be held liable for statements or actions pertaining to antitrust-sensitive areas by volunteer leaders who

appear to speak for the association, even if they are not authorized to speak in that area. Therefore, when any Society leaders, volunteers, or employees are making personal remarks outside of a Society setting, the speaker should clearly state that he or she is speaking for him or herself, and not on behalf of the Society.

In general, beyond the protected right to petition government or the courts, Society activities and communications shall not include any discussion or action that may be construed as an attempt to:

- Raise, lower, or stabilize prices or fees;
- Allocate markets, territories, or patients;
- Prevent any person or business entity from gaining access to any market or to any customer or patient;
- Boycott any person or business;
- Foster unfair trade practices;
- Assist in monopolization; or attempts to monopolize; or
- Otherwise violate applicable federal or state antitrust laws and trade regulations.

Guidance

The antitrust laws are complicated and often unclear. If any member is concerned about being in a “gray area,” the member should consult with the Society through its General Counsel.

Discussions of pricing, boycotts, or other matters mentioned above, as part of Society-scheduled programs or at Society-sponsored meetings could implicate and involve the Society in extensive and expensive antitrust challenges and litigation. If the conversation among competitors at a Society meeting turns to antitrust-sensitive issues, participants should discontinue the conversation until legal advice is obtained or leave the meeting immediately.

To assist the Society staff, officers, directors, delegates and committee chairs in recognizing situations that may give the appearance of an antitrust concern, the Board of Directors shall provide to each such person, a copy of the Society’s Antitrust Compliance Statement.

The Board of Directors or the Administrative Council will consult with General Counsel when questions arise as to the manner in which the antitrust laws may apply to the activities of the Society. Any violation of ASA’s antitrust policy should be brought to the attention of the General Counsel, who, together with the Executive Committee as circumstances dictate, will deal with the matter in a timely and appropriate manner.