



AMERICAN COUNCIL OF ACADEMIC PHYSICAL THERAPY

Antitrust Compliance Guidelines

Introduction

The antitrust laws are designed to insure that business is conducted in an open, competitive atmosphere and that competition is not unreasonably or unfairly restricted. These laws prohibit any agreement, combination, or conspiracy that may result in an unreasonable restraint of trade or an injury to competition. There are two antitrust statutes which are of principal concern to individuals and firms who take part in non-profit organizational activities: the Sherman Act and the Federal Trade Commission Act. These laws prohibit contracts, combinations, and conspiracies in restraint of trade.

Background

Certain kinds of conduct are exclusively presumed to be unreasonable and therefore unlawful. Such conduct, which is considered to be unlawful per se, consists of certain practices which clearly restrain competition and have no other redeeming benefits. Examples of such practices include:

- Agreements to fix prices, including agreements on the terms and conditions which affect the price of a product or service;
- Agreements to control markets or limit the production of a product or service;
- Agreements to engage in a group boycott or a refusal to deal with certain competitors, suppliers, insurers or patients;
- Agreements to allocate or divide markets.

The basic principle to be followed in avoiding antitrust violations in connection with organization activity is: to see that no illegal agreements, expressed or implied, are reached or carried out through the organization. Members should also avoid engaging in conduct which may give the appearance of an unlawful agreement. As a result, strict compliance with the antitrust laws is essential to safeguard against possible anti-competitive actions that could result in substantial costs and damages.

Guidelines for Compliance

Meetings are a normal, legitimate function of associations. However, because association meetings bring together competitors, they must be conducted with a view toward future antitrust scrutiny. To avoid possible liability under the antitrust laws, the following broad topics should not be discussed in a meeting:

DO NOT...

- Discuss prices, fees or rates, or features that can impact (raise, lower or stabilize) prices such as discounts, costs, terms and condition of sale, warranties or profit margins. Note that price fixing may be inferred by involvement in price related discussions – whether or not an agreement was made among competitors.
- Share information regarding current or future prices or fees for products or services because such actions can have a substantial impact on price and therefore be deemed price fixing. This includes not sharing prices that members pay for products or charge for services whether actual prices, averages or ranges. Sharing of prices that have been made available publicly in literature, government prices, or that have been made available on websites are permitted.
- Discuss refraining from selling products or services and do not discuss customers or groups of customers to which certain products and services are not to be sold or provided.
- Discuss boycotting or refusing to deal with certain competitors, insurers, suppliers, patients, or groups of suppliers or patients.
- Discuss allocating territories or markets in which products and services can be sold.
- Discuss costs, inventories, product capacities, profits, profit margins, market studies or surveys, market shares, or other current or future business matters which may affect competition.

DO...

- Understand the purpose and authority of each group or meeting in which you participate.
- Ensure that staff sends out all correspondence and that officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority when they do not, in fact, have such authority.
- Adhere to prepared agendas for all meetings and object any time meeting minutes do not actually reflect the matters which transpire.
- Ensure that if questions arise about the legal aspects or your individual responsibilities under the antitrust laws, you seek advice and counsel from your own counsel or from the staff and counsel of ACAPT.
- Leave any meeting (formal or informal) where improper discussions are held that might border on antitrust violations. Tell everyone why you are leaving.
- If you believe a discussion or action may violate the antitrust laws, speak up to say the discussion of that topic should end until legal counsel is consulted. If the discussion does not end until counsel is consulted, leave the meeting and contact counsel.