



# AMERICAN OPTOMETRIC ASSOCIATION

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## **Antitrust Compliance Policy**

The American Optometric Association (“AOA”) is committed to observance of federal and state antitrust laws. The AOA expects Covered Individuals, defined as employees, volunteers, and others acting on its behalf, to comply with these laws, to observe the guidelines set forth in this Statement of Policy, and to ask appropriate officials of the organization whenever there is any question about the legality of some practice. It is the responsibility of each individual acting on behalf of the AOA to make sure that his or her actions are consistent with the antitrust laws. Covered Individuals should know that violations of antitrust laws may lead to both criminal and civil (monetary) penalties, which can be severe. Any individual who is found to have violated this policy, or to have participated in a plan to violate antitrust laws is subject to immediate dismissal his or her position or relationship with the AOA.

The following description of the antitrust laws is necessarily very general and is meant primarily to raise a red flag regarding prohibited activities. Whenever a Covered Individual is uncertain whether an action might have antitrust consequences, he or she should immediately contact the AOA General Counsel’s office for clarification. Additionally, it is AOA policy that each individual acting on its behalf should alert legal counsel of any activity that is believed might be a violation of the antitrust laws.

The principal antitrust statutes of the United States are the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. Many states have statutes which replicate the prohibitions of the federal acts and in some circumstances exceed them. For purposes of this policy statement, the exact language of the various statutes is less important than their general prohibitions. For that reason, this policy statement focuses on the business situations that should be avoided rather than the wording of the statutes themselves.

### Relationships With Competitors

Because the AOA operates as a professional association for optometrists, the AOA and individuals acting on its behalf should avoid even the appearance of improper discussions with competitors. The AOA must not become involved in the competitive business decisions of its individual members.

The following is a list of types of prohibited discussions among competitors.

#### 1. Price Discussions

Covered Individuals are prohibited from discussing pricing with or among competitors. The

antitrust laws prohibit agreements with competitors on prices to be charged to customers. Covered Individuals should not discuss with competitors any information involving prices or the components of prices, costs of services, costs, discounts, fees, reimbursement rates, profits or overhead, without first obtaining advice from legal counsel. The courts have interpreted the concept of an agreement very broadly and have not limited it to a formal understanding such as a contract or even to an arrangement in which both parties indicate informally that they will follow a common plan. Individuals acting on behalf of the AOA may discuss with competitors the scientific and clinical aspects of the practice of optometry. For health professional associations, discussions about third party payers are a particular source of concern. Please see the “Antitrust and Third Party Payers” section on the last page of this policy for more information.

## 2. Discussions of Customer or Market Allocation

Employees or individuals acting on behalf of the AOA must not discuss allocating customers or geographic territories between or among competitors. The same broad rules that apply to discussion of price information (in section (1) above) apply here. There must be no agreements or discussions with competitors about who will sell to which customers, about the geographic territory that each competitor will cover, or about a willingness to use less than best efforts with some customers or territories.

## 3. Refusals To Deal

Employees or individuals acting on behalf of the AOA must not agree or discuss with competitors refusals to deal with a customer or group of customers, particular providers, suppliers, manufacturers, or third-party payers. Whether a doctor of optometry decides to (i) provide services to a particular customer, (ii) purchase products, equipment or services from a particular manufacturer or supplier or provider, or (iii) contract with a particular company, must be the unilateral decision of that optometrist and not the result of conversations with or among competitors.

## 4. Additional Considerations for Professional Associations

There are two additional areas of antitrust concern for professional associations: exchange of information and standardization. Many professional associations exchange information among members about safety, costs, and even sometimes past prices. This is not a routine activity for the AOA, but a situation may arise where AOA does wish to engage in some form of information exchange for a specific project. Legal counsel must be consulted prior to any such project – before any information is exchanged – because this type of activity is always sensitive.

Professional associations may also work for product standardization, particularly because of safety concerns. This activity may be permissible, but legal counsel should be consulted and kept advised.

## 5. Lobbying and Advocacy

Lobbying and advocacy work that is intended to influence the passage or enforcement of laws and regulations by government officials is generally exempt from antitrust liability, under the *Noerr-Pennington* doctrine. *Noerr-Pennington* is a judicially created doctrine (the name is taken from two U.S. Supreme Court cases) that holds that seeking government action that would have the effect of restricting competition is protected by the First Amendment. Activities that fall under this exception include lobbying for legislation, seeking executive branch enforcement of laws and regulations, or filing a lawsuit. All AOA advocacy and lobbying activities should be conducted in coordination with AOA government relations staff.

## 6. A Note on Trade Libel

“Trade libel” is a civil cause of action in which a plaintiff alleges that a defendant published false and disparaging information about the plaintiff’s goods or services, causing financial harm to the plaintiff.

Professional associations have sometimes been subject to trade libel claims when commenting on companies or products in the marketplace. This could be in the context of commenting on products or services which the association believes violate laws or regulations, or which the association believes are potentially harmful to the public. Ask legal counsel to review any statements that are critical of a particular company or product before publication. In particular, comments that a particular product or activity is illegal or dangerous must first be discussed with legal counsel.

## 7. Conclusion

It is the responsibility of each employee, volunteer, or other individual acting on behalf of the AOA to understand and comply with the antitrust compliance policy. If situations arise in which an individual has concerns about the antitrust implications of certain conduct, then he or she should contact legal counsel for guidance.

## **Antitrust and Third Party Payers - List of Permissible and Impermissible Actions**

### **1. Impermissible Actions under the Antitrust Laws**

- a) Coordinate with competitors to engage in joint negotiations with third party payers on the reimbursement policies.
- b) Facilitating concerted action with competitors to increase fees or reimbursement rates. Such concerted action would include:
  - i. A recommendation by AOA that its members withdraw from contracting with a third party payer;
  - ii. An AOA resolution that its members should not participate in a third party payer's plan or prohibiting members' participation in the plan;
  - iii. An AOA recommendation that its members not disclose certain patient medical information requested by a third party payer;
  - iv. The AOA members pledging that they will not submit patient information requested by a third party payer;
  - v. An AOA recommendation that its members protest or challenge every reimbursement made by a third party payer; or
  - vi. The AOA coordinating the mass resignation of members if the third party payer's policies are not acceptable.

### **2. Permissible Actions under the Antitrust Laws**

- a) Provide educational information to third party payers regarding the procedures performed by doctors of optometry and explain - where appropriate - that such procedures are identical to the procedures of ophthalmologists.
- b) Educate third party payers on the costs to doctors of optometry for providing various procedures.
- c) Obtain information from third party payers regarding the justification for the disparities in reimbursement rates.
- d) Educate third party payers on the scope of a doctor of optometry's practice as authorized by various states.
- e) Educate third party payers as to the reasons that AOA believes having full participation by doctors of optometry adds value to the plan.
- f) Explain to third party payers the reasons that doctors of optometry and ophthalmologists who provide the same services should be provided with the same opportunities within networks and plans.
- g) Obtain information from third party payers on whether the rates for identical procedures within individualized plans performed by doctors of optometry and ophthalmologists are different; and if there is a difference, then seek an explanation for that difference.
- h) Advise third party payers that reimbursement rates are too low for doctors of optometry as compared to ophthalmologists for the same procedures.
- i) Individual members may take whatever action they deem appropriate, as long as the individual member has made the decision to take that action unilaterally and is not taking the action based on a collective agreement with competitors.