Antitrust Compliance Policy

The American Optometric Association ("AOA") is committed to observance of federal and state antitrust laws. The AOA expects 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.

The penalties are severe for violations of the antitrust laws. Individuals are subject to prison sentences of up to ten years. In the past, persons who pleaded guilty were usually placed on probation, and persons found guilty at trial were given light sentences. Current practice is different: persons who plead guilty will generally serve at least six months in prison, and persons found guilty after a trial can expect an even longer period of incarceration. A company is subject to a fine of up to $100,000,000. Additionally, individuals and the company are subject to civil lawsuits in which an injured party may obtain damages, multiplied by three, and its attorneys' fees. It should go without saying that any individual who is found to have participated in an antitrust violation will be subject to dismissal from his or her employment 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 an individual is uncertain about whether some action might have antitrust consequences, he or she should immediately contact legal counsel for the AOA 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 trade 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

Employees or other individuals acting on behalf of the AOA are prohibited from discussing pricing with or among competitors. The antitrust laws prohibit agreements with competitors on prices to be charged to customers. Individuals acting on behalf of the AOA 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 like 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.

2. Discussions of Customer or Market Allocation

Employees or individuals acting on behalf of the AOA must not discuss with competitors allocating customers or geographic territories. The same broad rules that apply to discussion of price information 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 or third-party payers. Whether an optometrist decides to provide services to a particular customer or receive products or services from a particular supplier or provider must be the unilateral decision of that optometrist and not the result of conversations with or among competitors.

4. Additional Considerations for Trade Associations

There are two additional areas of antitrust concern that involve trade associations: exchange of information and standardization. Many trade associations exchange information among members about safety, costs, and even sometimes past prices. While this activity may be permissible, legal counsel should be consulted before any information is exchanged because this activity is always sensitive.

Trade 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.

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, he or she should contact legal counsel for guidance.

Antitrust Dos and Don'ts

1. Impermissible Actions under the Antitrust Laws

    - Coordinate with competitors to engage in joint negotiations with third party payers on the reimbursement policies.
    - Facilitating concerted action with competitors to increase fees or reimbursement rates. Such concerted action would include:
        (1) A recommendation by AOA that its members withdraw from contracting with a third party payer (group boycott);
        (2) An AOA resolution that its members should not participate in a third party payer's plan or prohibiting members' participation in the plan;
        (3) An AOA recommendation that its members not disclose certain patient medical information requested by a third party payer;
        (4) The AOA members pledging that they will not submit patient information requested by a third party payer;
        (5) An AOA recommendation that its members protest or challenge every reimbursement made by a third party payer; or
        (6) 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

    - Provide educational information to third party payers regarding the procedures performed by ODs and explain—where appropriate—that such procedures are identical to the procedures of ophthalmologists.
    - Educate third party payers on the costs to ODs for providing various procedures.
    - Obtain information from third party payers regarding the justification for the disparities in reimbursement rates.
    - Educate third party payers on the scope of an ODs practice as authorized by various states.
    - Educate third party payers as to the reasons that AOA believes having full participation by ODs adds value to the plan.
    - Explain to third party payers the reasons that ODs and ophthalmologists should be provided with the same opportunities within networks and plans.
    - Obtain information from third party payers on whether the rates for identical procedures within individualized plans for ODs and ophthalmologists are different; and if there is a difference, seek an explanation for that difference.

- Advise third party payers that reimbursement rates are too low for ODs as compared to ophthalmologists.
- Lobby state legislatures or other governmental bodies on behalf of the AOA's members for governmental action.
- 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.

Revised April 2009