

AMERICAN COLLEGE OF ALLERGY, ASTHMA & IMMUNOLOGY

ANTITRUST AND FAIR COMPETITION COMPLIANCE POLICY

Approved by the Board of Regents June 27, 2015

It is the policy of the American College of Allergy, Asthma & Immunology (“ACAAI”) to comply strictly with all laws and regulations applicable to its activities. Compliance with the letter and spirit of the antitrust laws is important to the success of ACAAI and to advancing its objectives.

Although trade associations, such as ACAAI, are formed for legitimate and socially responsible reasons, they are susceptible to claims of possible anticompetitive behavior. Accordingly, ACAAI and its members must conduct themselves in a manner that does not compromise ACAAI’s legitimate and procompetitive purposes by the possibility of potential antitrust violations.

The purpose of this policy statement (“Policy”) is to assist all ACAAI members, regents, officers, employees, and agents in understanding (i) the antitrust and fair competition laws that are applicable to ACAAI’s business and activities and (ii) the various rules adopted by ACAAI to ensure compliance with those laws. ACAAI requires all members, regents, officers, employees, and agents to abide by the terms of this Policy.

Both federal and state antitrust and fair competition laws have been regularly applied to the activities of trade associations. The key provisions of the federal antitrust laws include the Sherman Act, which prohibits, among other things, contracts, combinations and conspiracies in restraint of trade and the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act, which establish broad prohibitions against unfair methods of competition and unfair or deceptive business practices. Each state has similar laws.

Trade associations are frequent targets of antitrust investigations and litigation because association activities often meet one of the two elements necessary for a Sherman Act violation – collective action. Thus, a plaintiff (whether a private party or the government) may need only demonstrate a “restraint of trade” by an association to prove an antitrust violation. That, and the fact that antitrust laws are written in broad terms and contain general prohibitions, means associations, and their activities, are always at a higher risk of antitrust scrutiny.

For all of those reasons, ACAAI’s policy is to act cautiously and conservatively with respect to potentially sensitive competitive activities, even if they may be legal and proper. The intent of ACAAI’s policy is not just to avoid violating the antitrust laws, but to minimize litigation risk.

Accordingly, ACAAI has adopted the following prohibitions on activities by its members, regents, officers, employees, or agents:

1. No individual member, committee, regent, officer, employee, or other party may discuss or exchange price, cost, capacity, or other price-related information at any ACAAI meeting or at any formal or informal gathering of potential competitors.

2. No individual member, committee, regent, officer, employee, or other party may enter into any agreements regarding prices, costs, availability or efficacy of services, standards of care, division of markets, allocation of patients, or engage in any other activities that could be perceived as unreasonably restraining competition or otherwise violating the antitrust laws.
3. No individual member, committee, regent, officer, employee, or other party may sponsor or be a party to any agreements, express or implied, which restricts members' freedom to make independent decisions regarding patient care.
4. No individual member, committee, regent, officer, employee, or other party may sponsor or be a party to any agreements, express or implied, which restricts any member's freedom to make independent business decisions for his or her practice.
5. No individual member, committee, regent, officer, employee, or other party may attempt to persuade government agencies or third-party payors to adopt practices or policies on the basis of misleading or knowingly false information or by other illegal or improper means.
6. No individual member, committee, regent, officer, employee, or other party may take actions denying membership to any person otherwise qualified for membership or may not discipline or expel any member without appropriate due process following the advice of legal counsel.
7. No individual member, committee, regent, officer, employee, or other party may speak or act on behalf of ACAAI unless specifically granted such authority by the Board of Regents of ACAAI.
8. No individual member, committee, regent, officer, employee, or other party may issue or approve statements or adopt positions (public or otherwise) on behalf of ACAAI unless such statements or positions have been approved in advance by the Board of Regents.
9. No individual member, committee, regent, officer, employee, or other party may use ACAAI's letterhead or logo without the prior written consent of the Board of Regents.
10. The Board of Regents, Executive Committee and other committees, and meeting attendees, shall not participate in sessions outside of regularly scheduled meetings to discuss unauthorized or potentially anticompetitive activity.
11. Meeting Minutes shall be submitted for review by the President, legal counsel, and a designated member of ACAAI staff prior to distribution.
12. Periodic written reports to the Board of Regents are required from all ACAAI committees, staff, and officers reflecting pending matters, requests for action, and approvals for preliminary decisions. Such reports shall be submitted for review by the President, legal counsel, and a designated member of ACAAI staff prior to distribution.
13. ACAAI committees can only act within the scope of their express authority. Recommendations shall be made to the Board of Regents for approval of other actions they may wish to take.

14. A copy of this Policy shall be made available to all ACAAI members, regents, officers, employees, and agents and the need to comply with its terms shall be communicated regularly.
15. ACAAI will provide training on the Policy and compliance with antitrust and competition laws by its legal counsel at the first meeting of the Board of Regents following election of a new Board. Additionally, the ACAAI will provide each new Board of Regents with copies and an explanation of the UAS Litigation Settlement Guidelines and Antitrust Compliance Guidelines. All new ACAAI employees must participate in ACAAI's antitrust and fair competition law compliance training within 30 days of hire.

ANTITRUST COMPLIANCE GUIDELINES

Active participation in the American College of Allergy, Asthma & Immunology (“ACAAI”) is an important aspect of membership in the organization. Participation not only adds to the vitality and energy of the organization, but also furthers ACAAI’s mission of promoting excellence in the practice of the subspecialty of allergy and immunology.

While the positive contributions of professional societies are well recognized and encouraged, society activities also are subject to close scrutiny under both federal and state antitrust laws. The single most significant law affecting professional societies is the Sherman Antitrust Act, which makes unlawful every contract, combination or conspiracy in restraint of trade. Because a professional society is, by nature, a group of competitors joined together for a common business or professional purpose, a professional society may satisfy what would ordinarily be a difficult element in proving an antitrust violation. As such, any society activity that could be perceived as a restraint of trade may expose ACAAI and its members to antitrust risk.

Historically, the most significant area of antitrust concern for professional societies has been price fixing. Price fixing is a very broad term which includes any concerted effort or action that has an effect on prices, costs, terms or conditions of trade, or on competitors. Accordingly, ACAAI members and leaders should refrain from any discussion which may provide the basis for an inference that they agreed to take action with respect to prices, services, allocation of markets, or any other matter having a market effect. These discussions should be avoided both at formal meetings and informal gatherings and activities. In addition, meeting participants should be sensitive to other matters that may raise particular antitrust concern for professional societies: membership restrictions, codes of ethics, or other forms of self-regulation or certification. The following are guidelines that should be followed at all ACAAI meetings, informal gatherings, and activities:

- **DON’T** discuss your own or others’ prices or fees for service or anything that might affect prices or fees, such as costs, discounts, terms of sale, or profit margins.
- **DON’T** discuss what you or other member physicians plan to do in particular geographic or product markets or with particular patients, including the elimination, restriction, or limitation of the quantity or quality of any service to be offered to patients or limitation of services to particular territories, customers, or groups of patients.

- **DON'T** make public announcements or statements about your own prices, fees or costs, or those of competitors, at any ACAAI meeting or activity.
- **DON'T** speak or act on behalf of ACAAI or any of its committees unless specifically authorized to do so.
- **DO** conduct all ACAAI meetings in accordance with ACAAI's antitrust compliance policy and other ACAAI rules.
- **DO** prepare meeting agendas in advance of meetings, and adhere to those written agendas.
- **DO** ensure that the minutes of all meetings fully and accurately describe all actions taken at the meeting and only action items.
- **DO** object to any discussions or meeting activities that appear to violate these guidelines. If the discussion continues, you should promptly excuse yourself from the group, insist that the minutes reflect your departure, and immediately communicate your objection to ACAAI's legal counsel.
- **DO** alert ACAAI staff or legal counsel about any concerns regarding proposed actions or statements to be made by ACAAI or any committee or person acting on its behalf.
- **DO** consult with ACAAI's legal counsel before making any statement that you think may involve competitively sensitive information.
- **DO** ask ACAAI's legal counsel to review all written communications that may involve competitively sensitive information before they are distributed, including newsletters, letters, speeches, presentations, and communications.
- **DO** be on the alert for improper activities and don't participate if you think something is improper.

Adherence to these guidelines involves not only avoidance of antitrust violations, but avoidance of behavior which might be so construed. It is the ACAAI's practice to be more cautious with respect to potentially sensitive competitive activities than the law requires.

Bear in mind that the antitrust laws are stated in general terms, and that these guidelines only provide an overview of prohibited actions. If you have specific questions, seek guidance from your own legal counsel or from ACAAI's Executive Director or legal counsel.