

## AAOS ANTITRUST REMINDER

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Discussions at meetings of the American Academy of Orthopaedic Surgeons and the American Association of Orthopaedic Surgeons (collectively “AAOS”) often cover a broad range of topics pertinent to the interests or concerns of orthopaedic surgeons. The purpose of the Reminder is to alert AAOS members and staff to the kinds of activities most likely to raise antitrust concerns and to the precautions that must be taken to avoid potential antitrust problems.

As a general rule, except as noted below, discussions at AAOS meetings can address virtually any topic without raising antitrust concerns if the discussions are kept scrupulously free of even the suggestion of private regulation of the profession. However, a number of topics that might be (and have been) discussed at AAOS meetings may raise significant complex antitrust concerns. These include:

- Membership admissions, rejections, restrictions, and terminations;
- Professional compliance actions – reprimands, censures, suspensions and expulsions;
- Adoption of and revisions to Standards of Professionalism;
- Method of provision and sale of AAOS products and services to non-members;
- Restrictions in the selection and requirements for exhibitors at the AAOS Annual Meeting or in CME activities;
- Collecting and distributing certain orthopaedic practice information, particularly involving practice charges and costs;
- Obtaining and distributing orthopaedic industry price and cost information;
- Professional certification programs;
- Group buying and selling; and
- Inclusions or exclusion of other medical societies in organizational activities or offerings.

When these and related topics are discussed, the convener or members of the AAOS group should seek counsel from the AAOS Office of General Counsel.

AAOS staff has been trained to identify potential antitrust matters. The AAOS relies on the judgment of its staff regarding these matters. AAOS urges its Board, committees and other groups not to participate in discussions that may give the appearance of or constitute an agreement that would violate the antitrust laws.

Notwithstanding this reliance, it is the responsibility of each AAOS Board or committee member to avoid raising improper subjects for discussion. This reminder has been prepared to ensure that AAOS members and other participants in AAOS meetings are aware of this obligation.

The “Do Not’s” and “Do’s” presented below highlight only the most basic antitrust principles that may come before medical associations, like AAOS. AAOS members and staff participating in AAOS meetings should consult with the AAOS Office of General Counsel in all cases involving specific questions, interpretations or advice regarding antitrust matters.

### **Do Nots**

1. Do not, in fact or appearance, discuss or exchange information regarding:
  - a. Individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit terms, etc. or any other data that may bear on price, such as costs, production, capacity, inventories, sales, etc.
  - b. Raising, lowering or “stabilizing” orthopaedic prices or fees;
  - c. What constitutes a fair profit or margin level;
  - d. The availability of products or services;
  - e. The allocation of markets, territories or patients.
2. Do not suggest or imply that AAOS members should or should not deal with certain other persons or firms.
3. Do not suggest or imply that AAOS compliance standards, guidelines, measures or other resources should favor some members or practices and/or disadvantage others.
4. Do not foster unfair practices regarding advertising, standardization, certification or accreditation.
5. Do not discuss or exchange information regarding the above matters during social gatherings, incidental to AAOS-sponsored meetings.
6. Do not make oral or written statements on important issues on behalf of AAOS without appropriate authority to do so.

## **Do**

1. Do adhere to prepared agenda for all AAOS meetings, ideally distributed in advance. Agendas should be sufficiently detailed to disclose the nature of the discussions to be held. It is generally permissible for agendas to include discussions of such varied topics as professional economic trends, advances and problems in relevant technology or research, various aspects of the science and art of management, and relationships with local, state or federal governments.
2. Do require that a member of the AAOS professional staff participate in every AAOS meeting, either in person or by conference call. If any meeting is expected to deal with sensitive competitive issues, counsel from the AAOS Office of General Counsel should ordinarily be present. Committee staff should consult with AAOS legal counsel to determine whether the presence of counsel is advisable. If AAOS legal counsel is not at the meeting, members and staff should not hesitate to consult the AAOS Office of General Counsel as necessary.
3. Do ensure that a record of all meetings, consisting of formal minutes or a memo to the file, should be made by AAOS committee staff.
4. Do object whenever meeting summaries do not accurately reflect the matters that occurred.
5. Do consult with AAOS counsel on all antitrust questions relating to discussions at AAOS meetings.
6. Do object to and do not participate in any discussions or meeting activities that you believe violate the antitrust laws; dissociate yourself from any such discussions or activities and leave any meeting in which they continue.

## **Special Guidelines for Collecting and Distributing Information**

The collection and distribution of information regarding business practices is a traditional function of associations and is well-recognized under the law as appropriate, legal and consistent with the antitrust laws. However, if conducted improperly, such information gathering and distributing activities might be viewed as facilitating an express or implied agreement among association members to adhere to the same business practices. For this reason, special general guidelines have developed over time regarding association's reporting on information collected from and disseminated to members. Any exceptions to these general guidelines should be made only after discussion with the AAOS Office of General Counsel. These general guidelines include:

1. Member participation in the statistical reporting program is voluntary. The statistical reporting program should be conducted without coercion or penalty. Non-members should be allowed to participate in the statistical reporting program if eligible; however, if there is a fee involved, they may be charged a reasonably higher fee than members.
2. Information should be collected via a written instrument that clearly sets forth what is being requested.
3. The data that is collected should be about past transactions or activities; particularly if the survey deals with prices and price terms (including charges, costs, wages, benefits, discounts, etc.), it should be historic (more than three months old).
4. The data should be collected by either the AAOS or an independent third party not connected with any one member.
5. Data on individual orthopaedic surgeons should be kept confidential.
6. There should be a sufficient number of participants to prevent specific responses or data from being attributable to any one respondent. As a general rule, there should be at least five respondents reporting data upon which any statistic or item is based, and no individual's data should represent more than 25% on a weighted average of that statistic or item.
7. Composite/aggregate data should be available to all participants – both members and non-members. The data may be categorized, e.g., geographically, and ranges and averages may be used. No member should be given access to the raw data. Disclosure of individual data could serve to promote uniformity and reduce competition.
8. As a general rule, there should be no discussion or agreement as to how members should adjust, plan or carry out their practices based on the results of the survey. Each member should analyze the data and make business decisions independently.

## **CONCLUSION**

This reminder has been written to avoid any violation of the law by AAOS members and staff and any activity that might give the appearance of illegality. However, no set of guidelines can address every possible type of inappropriate or unlawful activity. AAOS members and staff should use careful judgment to identify situation where AAOS activities, or discussions at AAOS-sponsored meetings, may violate federal or state law or may be perceived as doing so. In those cases, it is the responsibility of the member and staff to avoid these situations and consult with the AAOS Office of General Counsel when necessary.

Adopted: June 2005  
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