

## **Ohio Dermatological Association Antitrust Compliance Policy\***

The Ohio Dermatological Association is a non-profit, statewide organization committed to the mission of improving health and quality of life through the practice of dermatology. ODA was formed to promote and advance the common business interests of physicians and surgeons specializing in dermatology; to promote, advance, foster and stimulate the specialty of dermatology; to further by clinical study, laboratory research, publication and teaching, the knowledge of dermatology and the application of such knowledge to the prevention and treatment of diseases.

ODA has a strict policy of compliance with federal and state antitrust laws. The antitrust laws prohibit agreements among competitors that restrain trade, and ODA members can be considered to be competitors for purposes of antitrust challenges even if their practices are not in the same geographic areas. The penalties for violations of the antitrust laws are severe for medical societies and their members.

In all ODA activities, each member, as well as ODA staff, shall be responsible for following the ODA's policy of strict compliance with the antitrust laws. ODA officers, directors, committee chairs, and executive staff shall ensure that this policy is known and adhered to in the course of activities pursued under their leadership. Antitrust compliance is the responsibility of every ODA member and ODA staff.

### **General Antitrust Compliance Principles**

ODA will not become involved in the competitive business decision of its individual members, nor will it take any action that would tend to restrain competition. The ODA is firmly committed to the principle of competition served by the antitrust laws, and good business judgment demands that every effort be made to assure compliance with all applicable federal and state antitrust laws and trade regulations.

ODA members cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower, or stabilize prices or fees, allocate or divide up markets, or encourage or facilitate boycotts. Individual ODA members must make business decisions on their own and without consultation with their competitors or the ODA.

The antitrust laws are complicated and often unclear. If any member is concerned about being in a "gray area," the member should consult with the ODA staff or legal counsel. If the conversation among competitors at an ODA meeting turns to antitrust-sensitive issues, participants should discontinue the conversation until legal advice is obtained or leave the meeting immediately.

Discussions of pricing or boycotts as part of ODA-scheduled programs or at ODA-sponsored meetings could implicate and involve the ODA in extensive and expensive antitrust challenges and litigation. In addition, the U.S. Supreme Court has determined that an association can be held liable for statements or actions in antitrust-sensitive areas by volunteer leaders who claim to speak for the association, even if they are not authorized to speak in that area. Directors and officers of the ODA must, therefore, make clear whether they are speaking in their official capacity when they address such issues; by contrast, if they are making personal remarks outside of an ODA setting, the speaker should clearly state that he or she is speaking for him or herself, and not on behalf of the ODA.

To assist the ODA staff, officers, directors and committee chairs in recognizing situations that may give the appearance of an antitrust concern, the Board of Directors shall provide to each such person, copies of the ODA's General Rules of Antitrust Compliance. In addition, the ODA's antitrust compliance policy will be referenced at the start of each meeting where ODA business will be discussed, and this action will be noted in the minutes of the meeting.

Any violation of the antitrust policy will be brought to the attention of the Board of Directors, and the Board will deal with it in a timely and appropriate manner. The Board of Directors will consult with legal counsel when questions arise as to the manner in which the antitrust laws may apply to the activities of ODA.

### **Specific Rules of Antitrust Compliance**

1. ODA activities shall not be used for the purpose of bringing about, or attempting to bring about, any understanding or agreement, written or oral, formal or informal, expressed or implied, among competitors with regard to prices or fees, terms or conditions of sale, discounts, territories or customers.

For example, any agreement by competitors to "honor," "protect," or "avoid invading" one another's geographic areas, practice specialties, or patient lists would violate the law.

2. ODA activities and communications shall not include discussion or actions, for any purpose or in any fashion, of prices or pricing methods or other limitations on either the timing of services or the allocation of territories or markets or customers in any way. For example, ODA members cannot come to understandings, make agreements, or otherwise concur on positions or activities that are directed at fixing prices, fees, or reimbursement levels.

Likewise, ODA members cannot make agreements as to whether they will or will not enter into contracts with certain managed care plans. Even if no formal agreements are reached on such matters, discussions of prices, group boycotts, or market allocations followed by parallel conduct in the marketplace can lead to antitrust scrutiny or challenges. Members may, however, consult with each other and freely discuss the scientific and clinical aspects of the practice of medicine, and ODA generally can issue voluntary practice guidelines based solely on objective medical and scientific information.

3. ODA shall not adopt any bylaws, regulations, or policies that restrict the ability of dermatologists, allied healthcare practitioners or others to practice their profession in a manner that violates the antitrust laws. For instance, ODA will not impose ethical restrictions on physician advertising other than to ensure that such advertising is truthful and non-deceptive. ODA will not unduly attempt to restrain allied healthcare practitioners from practicing other than to ensure the collaborative or supervisory practice arrangements provide adequate patient safety and are in compliance with the law.

4. ODA shall not undertake any activity that involves exchange or collection and dissemination among competitors of any information regarding prices, pricing methods, cost of services or labor, or sales or distribution without first obtaining the advice of legal counsel, when questions arise as to the proper and lawful methods by which these activities may be pursued. For example, caution should be exercised in collecting data on usual and customary fees, managed care reimbursement levels, workforce statistics, and job market opportunities. While the mere collection of data on such matters is

permissible if certain conditions are met, antitrust concerns may arise if the data becomes the basis for collective action.

In general, ODA activities and communications shall not include any discussion or action that may be construed as an attempt to: (1) raise, lower, or stabilize prices; (2) allocate markets or territories; (3) prevent any person or business entity from gaining access to any market or to any customer for goods or services or to practice their profession in a lawful manner; (4) prevent or boycott any person or entity, including Medicare, managed care organizations or other third party payors, from obtaining services freely in the market; (5) foster unfair trade practices; (6) assist in monopolization; or attempts to monopolize; or (7) in any way violate applicable federal or state antitrust laws and trade regulations.

The actual purpose and intent of ODA's policies and programs are important in this regard. They cannot be aimed at accomplishing anti-competitive objectives.

*\*This statement is based on the compliance policy adopted by the American Academy of Dermatology Association, the ODA's national affiliate.*

***Adopted by the Ohio Dermatological Association Board of Directors on July 9, 2014.***