

American Association of Certified Orthoptists
POLICY STATEMENT
Guidelines for the Avoidance of Inadvertent Anticompetitive Conduct

Policy:

The American Association of Certified Orthoptists (“AACO” or “the Association”), with the advice of legal counsel, has adopted guidelines that must be followed to avoid inadvertent anticompetitive conduct that could be attributed to the Association. These guidelines shall apply to all of the Association’s members, officers, directors, committee members, and representatives to other professional or governmental organizations, and employees.

Background:

The Supreme Court of the United States has held that a trade association would be liable under the federal antitrust laws for treble damages arising from unlawful acts of one of its representatives, even if those acts were not authorized by the organization, if the representative had the "apparent authority" (viewed from the perspective of outsiders) to speak or act in the name of and with the apparent endorsement or backing of the organization. The Court held that the appearance of authority could be created, for example, if the representative's unlawful acts were statements written on the organization's letterhead or if other writings or oral statements were made in the representative's capacity with the organization. The Court's holding applies to all membership organizations, including the AACO.

Evaluation:

It is essential that all personnel and representatives of the Association be specifically aware of the types of conduct that could be found to constitute anticompetitive conduct and that they adhere to straightforward guidelines designed to avoid inadvertent anticompetitive conduct and the possible attribution of that conduct to the Association.

Guidelines:

Except when expressly authorized in advance by the AACO Board of Directors or in a manner determined by the Board of Directors, the following guidelines shall prevail.

1. Discussions as described below shall not be conducted at any formal or informal meeting of the members, the Board of Directors, or a committee of the Association or by any Association representative to any formal or informal meeting of any other professional or governmental organization, and must be avoided in all other contacts with actual or potential competitors.
 - a) Discussions about, or that may have the effect of, fixing, raising, depressing, pegging, or stabilizing prices, fees or salaries; or any element of prices, fees or salaries; or establishing minimum or maximum prices, fees or salaries;
 - b) Discussions about, or that may have the effect of, either withholding patronage or services from or otherwise discouraging dealings with, or encouraging exclusive dealings with, any health care provider or group of health care providers, any supplier or purchaser or group of suppliers or purchasers of health care products or services, any actual or potential competitor or group of actual or potential competitors, or any patient, group of patients, or other segment of the public;
 - c) Discussions about, or that may have the effect of, allocating or dividing geographic or service markets, customers, or patients;

- d) Discussions about, or that may have the effect of, restricting, limiting, prohibiting, or sanctioning advertising or soliciting that is not false, misleading, or deceptive;
 - e) Discussions about, or that may have the effect of, discouraging entry into or competition in any segment of the health care market;
 - f) Discussions about whether or not the practices of any member, actual or potential competitor, or other person are "unethical" or "anticompetitive"; and
 - g) Discussions about the safety, quality, or efficacy of the products or services of, or the prices or fees charged by, any health care provider or group of health care providers, any supplier or purchaser or group of suppliers or purchasers of health care products or services, or any actual or potential competitor or group of actual or potential competitors. This does not restrict or prohibit study and reasonable discussion and assessment of the safety or efficacy of technology, drugs, and devices.
2. Minutes shall be prepared and maintained for all meetings of the members, the Board of Directors and committees of the Association. Except for matters protected by the attorney-client privilege, the subject matter of all discussions conducted and all decisions reached at those meetings shall be reflected in the minutes of those meetings. Association representatives to other organizations shall take reasonable steps to ensure that minutes of the meetings of those organizations are prepared and maintained, except for matters protected by the attorney-client privilege, and that the subject matter of all discussions conducted and decisions reached at those meetings are reflected in the minutes of those meetings.
 3. No member, officer, director, committee member, representative, or employee of the Association shall have the authority to, or shall, issue any written statement on Association letterhead to anyone on any of the subjects enumerated in item 1 above.
 4. No member, officer, director, committee member, representative, or employee of the Association shall have the authority to, or shall, issue any oral or written statement to anyone on any of the subjects enumerated in item 1 above, in which or in connection with which the person issuing the statement identifies his or her affiliation with the Association or purports to act on behalf of, in the name of, or with the endorsement of or backing of the Association.
 5. Notwithstanding anything apparently or expressly to the contrary contained in the preceding items, a person who is affiliated with the Association and who has been specifically authorized by the Association or its Board of Directors or its Executive Committee to communicate in the name of and on behalf of the Association to representatives of the executive and legislative branches of government with respect to administrative or legislative proposals that are under consideration by those branches and are of direct concern to the Association, shall not be required to comply with item 3 or item 4 above with respect to any oral or written communication that satisfies the following conditions:
 - a) Is first approved by the Board of Directors or in a manner determined by the Board of Directors; and
 - b) Is related solely to the substance or merits of a proposal that is then the subject of administrative or legislative hearings or proceedings being conducted by the executive or legislative branch of government and that does or could, if adopted, relate to the science and art of orthoptics or related disciplines within the profession of ophthalmology; or to the provision of or in payment for services offered by orthoptists or ophthalmologists; and
 - c) Is made by that person as a participant in those hearings or proceedings and solely in connection with that participation; and

- d) Is made directly and solely to a representative of the executive or legislative branch of government who is a participant in those hearings or proceedings with copies of such communications provided only to persons designated by the Board of Directors of the Association or in a manner determined by the Board of Directors.
6. Notice that a statement has been giving as described in items 3, 4 or 5 above shall be given in a timely manner to the Association's designated administrator. An exact copy of each written statement described in items 3, 4 or 5, whether or not the statement has been expressly authorized in advance either by the Board of Directors of the Association or in a manner determined by the Board of Directors, shall be furnished to the Association's designated administrator immediately after the statement is issued, together with a complete record of its distribution. If requested by the Association, a transcript of each oral statement described in items 4 or 5 above shall be furnished to the Association's designated administrator immediately after the statement is given.

Adopted: November 12, 2017

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Summary

All membership associations – including the American Association of Certified Orthoptists – are subject to the federal government’s antitrust laws and rules. These generally apply to what is known as “anticompetitive conduct” and can occur when separate economic entities engage in activities including things like price fixing, boycotting a competitor, or improperly interfering in the business practices of another person or entity.

Membership associations by their very nature are made up of “separate economic entities.” Most of our members work for different institutions or companies, and thus could be considered to be competitors. As such, whenever our members get together, possible violations of the antitrust laws (even inadvertent) can take place unless everybody is aware of what constitutes appropriate behavior and the AACO’s related policies. The U.S. Department of Justice, the Federal Trade Commission or private entities may be involved in enforcement actions of Federal antitrust laws.

A *summary* of our policies appears below. Note that this document *does not* replace the formally adopted policy, which we recommend interested parties read in its entirety.

- Discussions at any meeting of members – including the Board, Committees, delegates to other organizations, or informal groups of members – shall not include any of the following:
 - anything to do with setting prices, fees, or salaries.
 - boycotting any individual or group of health care providers; suppliers or purchasers of healthcare products or services; or any actual or potential competitors, patients or other segment of the public. *Note:* To be a violation, a boycott does not necessarily need to be implemented; merely discussing activities that could lead to a boycott can be considered a violation.
 - allocating or dividing geographic or service markets, customers or patients.
 - restricting or limiting advertising or solicitations that otherwise are not false, misleading or deceptive. Of course, AACO *does not* condone false, misleading or deceptive advertising.
 - discouraging competition in any segment of the health care market.
 - talking about whether or not practices of a member, competitor or somebody else are “unethical” or are “anticompetitive.” *Note:* An exception to this rule might be applicable as part of a duly authorized and properly organized code of ethics enforcement action.
 - discussing the safety, quality, efficacy, prices or fees of products or services relating to health care products or services.
- Minutes of all meetings of the AACO, including other organizations where AACO representatives are participants, shall be maintained which include the subject matter of all discussions and decisions reached.
- Members, officers, committee members, or others do not have the authority to make any written statement on AACO letterhead, or any oral or written statement otherwise in which they purpose to be acting on behalf of the AACO, relating to the subjects listed in the first bullet above.
- It is important for members to keep in mind that in addition to written communication, and formal meetings and informal gatherings of members, email communication also is subject to the rules noted above.