



POLICY ON ANTITRUST COMPLIANCE

The Council of Medical Specialty Societies (“CMSS”) is an organization comprised of medical specialty societies and promotes education, professionalism, and quality of health care services. The policy of CMSS is to comply fully with all laws applicable to its programs and activities, specifically including federal and state antitrust laws.

CMSS adopts this Policy on Antitrust Compliance and the Guidelines described below to help ensure that CMSS member organizations, board members, officers, committee members, representatives to other organizations, and staff comply with the antitrust laws in connection with CMSS programs, activities, and responsibilities. The Executive Vice President of CMSS, as the senior staff person, should be informed promptly of any questions or concerns about whether conduct during or in connection with CMSS programs, activities, and communications complies with this Policy and the Guidelines.

Guidelines

These Guidelines apply to all CMSS board members, officers, committee members, representatives to other organizations, and staff in connection with CMSS programs, activities, communications, and responsibilities.

DO NOT discuss, communicate, or make announcements about the following topics for the purpose or intended effect of fixing prices, allocating customers or markets, or unreasonably restraining trade:

- Prices or costs for products or services of CMSS member organizations.
- Allocation of markets, customers, products, or services.
- Whether pricing or other competitive practices of any CMSS member organization are improper or objectionable.
- Whether to deal or refuse to deal with a CMSS member organization due to its pricing or other competitive practices.
- Future intentions of any CMSS member organization concerning pricing, marketing, purchasing, or the geographic/product scope of your operations.
- Any confidential, competitively sensitive information.
- Fees or other aspects of reimbursement for individual members of CMSS member organizations.



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- Agreements to collectively deal or refuse to deal with third party purchasers of services of individual members of CMSS member organizations.
- Agreements to restrict the scope of practice of physicians or other health care providers.

DO NOT permit participants in a CMSS program, meeting, or communication to engage in discussion or comments about these subjects.

DO notify the CMSS Executive Vice President promptly of any conduct in CMSS programs, meetings, or communications that appears to be contrary to these Guidelines or the CMSS Policy on Antitrust Compliance.

DO insist that a written agenda be followed and minutes kept at all CMSS meetings.

DO confer with the CMSS Executive Vice President before speaking at any CMSS program or meeting about a topic that may have competitive ramifications.

DO request review by the CMSS Executive Vice President of any written materials that address a topic with competitive ramifications.

DO follow the CMSS Bylaws, policies, and rules, including this Policy on Antitrust Compliance and these Guidelines.

CMSS Meetings

To avoid potential antitrust risks, all CMSS Board, Council, Committee and Task Force meetings shall be conducted in accordance with the following rules:

1. All CMSS meetings shall be regularly scheduled and conducted pursuant to a written agenda.
2. The written agenda will be prepared and distributed in advance of the meeting, with a copy to the CMSS Executive Vice President. Issues with potential antitrust implications will be reviewed and discussed by the Chairman of the meeting with the Executive Vice President and, if deemed appropriate, legal counsel.
3. Accurate minutes of every meeting will be prepared and reviewed. Audio, video, or other recordings of meetings will not be permitted, except under limited circumstances (i.e. education programming, etc.). Minutes will be reviewed and approved at the next meeting.
4. In the event that any member has a concern about potential antitrust implications of a discussion during a meeting, he or she shall interrupt discussion and state that concern



immediately. If discussion is not terminated and the concern resolved, the concerned member should state that he or she is leaving the meeting for that reason, and leave.

5. Discussion and communication on matters in violation of the CMSS Policy on Antitrust Compliance and Guidelines will not be permitted at a CMSS meeting or in communications on behalf of CMSS, and violating parties may be asked to leave the meeting by the Chairman.

Adopted by the CMSS Board of Directors September 9, 2013



Background:

Overview of Antitrust Laws

The principal antitrust laws that apply to CMSS are the Sherman Act, Federal Trade Commission Act, and similar antitrust laws of the states.

Section 1 of the Sherman Act prohibits contracts, combinations, or conspiracies among two or more entities that unreasonably restrain trade and affect interstate commerce. The conspiracy element requires proof of a conscious commitment to a common scheme designed to achieve an unlawful objective (e.g., a written contract, direct evidence of an oral agreement, or circumstantial evidence such as opportunities to conspire, uniform anticompetitive conduct, and market circumstances that tend to exclude the possibility of independent action).

Some restraints are presumed to have anticompetitive effects (e.g., price fixing, bid rigging, market and customer allocations); others must be shown to harm competition in a relevant economic market.

The Guidelines are intended to avoid conduct that may give rise to per se violations of Section 1.

Section 2 of the Sherman Act prohibits monopolization, attempted monopolization, and conspiracy to monopolize. Monopolization requires proof that a party possesses monopoly power (i.e., the power to control prices or exclude competition), and acquired, maintained, or enhanced that power through exclusionary, predatory, or other anticompetitive conduct. Attempted monopolization requires proof that a party engaged in such conduct with a specific intent to monopolize and a dangerous probability of achieving monopoly power. Conspiracy to monopolize requires proof of conspiracy, an overt act in furtherance of the conspiracy, and a specific intent to monopolize.

Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. The Act empowers the Commission to determine the scope of these prohibitions, although most recent Commission enforcement against anticompetitive conduct has been analyzed under the same legal standards that apply to the Sherman Act. The Commission engages in active enforcement in the health care industry, including with respect to conduct by professional organizations.

State antitrust laws vary in substantive terms and remedies, but most state laws contain prohibitions similar to Section 1 and Section 2 of the Sherman Act.

Enforcement and Penalties

The U.S. Department of Justice enforces the Sherman Act, which provide both criminal and civil remedies. States and private parties that are injured or threatened with antitrust injury also may assert claims under the Sherman Act, and may recover three times the amount of damages suffered and attorney's fees, as well as equitable relief.



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The Federal Trade Commission has exclusive authority to enforce the FTC Act. State antitrust laws are enforced by state attorneys general, and typically authorize private parties to assert claims for damages and equitable relief similar to federal laws.

Violation of federal antitrust laws can result in issuance of cease and desist orders and broad injunctive relief which can place extensive governmental restraints on future activities of an organization.