

American Academy of Orthopaedic Surgeons  
American Association of Orthopaedic Surgeons

ANTITRUST REMINDER  
(adopted June 2005)

Discussions at AAOS meetings often cover a broad range of topics pertinent to the interests or concerns of orthopaedic surgeons. 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;
- 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;
- Establishment of the professional compliance program and adoption of Standards of Professionalism;
- 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. AAOS members and others 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 foster unfair practices regarding advertising, standardization, certification or accreditation.
4. Do not discuss or exchange information regarding the above matters during social gatherings, incidental to AAOS-sponsored meetings.
5. 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. 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 object whenever meeting summaries do not accurately reflect the matters that occurred.
3. Do consult with AAOS counsel on all antitrust questions relating to discussions at AAOS meetings.

4. 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 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, i.e., more than three months old.
4. The data should be collection 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 analysis the date and make business decisions independently.

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