

AMERICAN SOCIETY FOR METABOLIC AND BARIATRIC SURGERY

Antitrust Compliance Policy

This document sets forth the American Society for Metabolic and Bariatric Surgery's (the "Society's") Antitrust Compliance Policy and the rules of conduct and compliance procedures which govern all Society activities. These formal guidelines are intended to: (1) prevent the occurrence of an actual antitrust violation in the course of Society activities, and (2) prevent inadvertent conduct which might give the appearance of an antitrust violation to someone unfamiliar with the Society's nature and purposes.

Overview of Antitrust Issues

The antitrust laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. Because the Society and other trade and professional associations are, by definition, combinations of competitors, one element of a possible antitrust violation is generally present, and only some action by the association that unreasonably restrains trade generally needs to occur for there to be an antitrust violation. Consequently, associations are common targets of antitrust plaintiffs and prosecutors.

The consequences for violating the antitrust laws can be severe and can lead to both criminal prosecution and civil liability. The antitrust laws can be enforced against associations, association members, and the association's officers and employees by both government agencies and private parties (such as competitors and consumers) through treble (triple) damage actions. As the principal federal antitrust law is a criminal conspiracy statute, a member who attends a meeting at which competitors engage in illegal discussions may be held criminally responsible, even if he or she says nothing at the meeting. The member's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making him or her liable to the same extent as those who actively participated in the illegal agreement.

The antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Above all else, association members should be free to make business decisions based on the dictates of the market – not the dictates of the association.

Some activities by competitors are deemed so pernicious and harmful that they are considered *per se* violations – it does not matter whether or not the activities actually have a harmful effect on competition; the effect is presumed. These generally include price fixing, allocation of customers (i.e., patients or vendors), markets or territories, bid-rigging, and some forms of boycotts. In addition, there are many features that factor into price; agreements between competitors regarding standard fees or standard services that can directly impact price also are proscribed.

Other actions such as standards development, certification programs, and relationships between distributors and suppliers generally are evaluated under a rule of reason – there is a balancing between the pro-competitive and anti-competitive aspects of the activities; the pro-competitive effects must outweigh the anti-competitive ones.

ASMBS Antitrust Policy

The Society is a professional, educational and scientific association organized to study morbid obesity and advance the art and science of metabolic and bariatric surgery. Its aim is to promote research and education in the areas of interest of its members. The Society is not intended to play any role in the competitive decisions of its members, or to in any way restrict competition in the metabolic and bariatric surgery and related industries.

Through its courses, conferences and other activities, the Society brings together representatives of competitors in the field of metabolic and bariatric surgery and related disciplines along with industry stakeholders. Although the subject matter of Society activities is normally educational or scientific in nature, and although the purpose of these activities is principally educational and there is no intent to restrain competition in any manner, nevertheless the Society's Executive Council recognizes the possibility that the Society and its activities could be seen by some as an opportunity for anticompetitive conduct. For this reason, the Executive Council has taken the opportunity, through this statement of policy, to make clear its unequivocal support for the policy of competition served by the antitrust laws and its uncompromising intent to comply strictly in all respects with those laws.

It shall be the responsibility of every member of the Society to be guided by the Society's policy of strict compliance with the antitrust laws in all Society activities. It shall be the special responsibility of Executive Council members, committee chairpersons, Society officers, and officers of state and local chapters to ensure that this policy is known and adhered to in the course of activities pursued under their leadership.

To assist Society staff and its Executive Council members, officers, committee chairpersons, and state and local chapter officers in recognizing situations which may raise the appearance of an antitrust problem, the Executive Council will as a matter of policy furnish to each of such persons the Society's Antitrust Compliance Policy. The Society will also make available general legal advice when questions arise as to the manner in which the antitrust laws may apply to the activities of the Society.

Antitrust compliance is the responsibility of every Society member. Violations of the Society's Antitrust Compliance Policy may result in disciplinary action or removal from any Society office or committee position held by a member violating this policy.

The following rules are applicable to all Society activities and must be observed in all situations and under all circumstances without exception or qualification other than as noted below.

1. Neither the Society nor any meeting, course, committee, state or local chapter meeting or other activity of the Society shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among competitors with regard to prices, fees charged for services, terms or conditions of treatment, territories or allocation of patients.
2. Except as discussed in item 7 below, no Society activity or communication shall include discussion for any purpose or in any fashion of prices or pricing methods including fees charged for services or treatment, or of allocation of territories or patients.

3. No Society committee or state or local chapter shall undertake any activity which involves exchange or collection and dissemination among competitors of any information regarding prices or pricing methods including fees charged for services or treatment.
4. No Society committee or group should undertake the collection of individual practice cost data, or the dissemination of any compilation of such data, without prior approval of legal counsel for the Society.
5. No Society activity should involve any discussion of costs, or any exchange of cost information, for the purpose or with the probable effect of (a) increasing, maintaining or stabilizing prices or fees charged for services or treatment; or, (b) reducing competition in the marketplace with respect to the range or quality of products or services offered.
6. No discussion of costs should be undertaken in connection with any Society activity for the purpose or with the probable effect of promoting agreement among competing firms with respect to their selection of products for purchase, their choice of suppliers or vendors, or the prices they will pay for supplies.
7. Papers and other materials formally presented at or in connection with Society educational meetings or programs may refer to costs and other economic data, provided such references are not accompanied by any suggestion, express or implied, to the effect that prices or fees should be uniform.
8. Authors of conference papers shall be informed of the Society's antitrust policy and the need to comply with the policy in the preparation and presentation of their papers.
9. No Society activity or communication shall include any discussion which might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods or services, or to prevent any business entity from obtaining a supply of goods or otherwise purchasing goods or services freely in the market.
10. No Society activity or communication shall include any discussion which might be construed as an agreement or understanding to refrain from purchasing any equipment, services or other supplies from any supplier or vendor.
11. All members are expected to comply with these guidelines and the Society's Antitrust Compliance Policy in informal discussions at Society meetings, conferences and courses as well as in formal Society activities.
12. The following statement should appear in Society-sponsored course and meeting materials:

The antitrust laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. The ASMBS has a policy of strict compliance with federal and state antitrust laws.

ASMBS members, guests and other persons attending this conference are expected to comply with the ASMBS Antitrust Policy. Among other things, the policy prohibits: 1) discussion of prices or fees charged to patients or paid to third

parties, 2) discussion of issues which can impact or affect prices or fees such as fee discounts, practice costs, salaries, contract terms or profit margins, 3) agreements between competitors regarding uniform prices or fees, terms of service or contract provisions, 4) discussion or agreements between competitors to assign service areas, allocate patients, or establish markets or territories, 5) discussion or agreements between competitors not to deal with suppliers or other third parties, and 6) attempting to prevent a supplier from selling to or dealing with a competitor. These policies apply to formal meetings, presentations and functions during the conference as well as to informal gatherings and contacts.

Please visit our Web site, www.ASMBS.org, to view the complete ASMBS Antitrust Policy.

Adopted June 22, 2009