



## **ANTITRUST AND FAIR COMPETITION COMPLIANCE POLICY**

It is the policy of the American Society of Colon and Rectal Surgeons (“ASCRS”) to comply strictly with all laws and regulations applicable to its activities. Compliance with the letter and spirit of the antitrust laws is important to the success of ASCRS and to advancing its objectives.

Although exempt organizations with professional memberships, such as ASCRS, are formed for legitimate and socially responsible reasons, they are susceptible to claims of possible anticompetitive behavior. Accordingly, ASCRS and its members must conduct themselves in a manner that does not compromise ASCRS’s legitimate and procompetitive purposes by the possibility of potential antitrust violations.

The purpose of this policy statement (“**Policy**”) is to assist ASCRS members, directors, officers, employees, volunteers, and agents in understanding: (i) the antitrust and fair competition laws that are applicable to ASCRS’s activities; and (ii) the various rules adopted by ASCRS to ensure compliance with those laws. ASCRS requires all members, directors, officers, employees, volunteers, and agents to abide by the terms of this Policy.

Both federal and state antitrust and fair competition laws have been regularly applied to the activities of exempt organizations with professional memberships. The federal antitrust laws include the Sherman Act, which prohibits, among other things, contracts, combinations, and conspiracies in restraint of trade and the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act, which establish broad prohibitions against unfair methods of competition and unfair or deceptive business practices. Each state has similar laws.

Exempt organizations with professional memberships are frequent targets of antitrust investigations and litigation because the activities of these organizations often meet one of the two elements necessary for a Sherman Act violation – collective action. Thus, a plaintiff (whether a private party or the government) may need only demonstrate a “restraint of trade” by these organizations to prove an antitrust violation. That, and the fact that antitrust laws are written in broad terms and contain general prohibitions, means exempt organizations with professional memberships, and their activities, are always at a higher risk of antitrust scrutiny.

For all of those reasons, ASCRS’s policy is to act cautiously and conservatively with respect to potentially sensitive competitive activities, even if they may be legal and proper. The intent of this policy is not just to avoid violating the antitrust laws, but to minimize litigation risk.

Accordingly, ASCRS has adopted the following prohibitions on activities by its members, directors, officers, employees, volunteers, and agents:

1. No member, director, , officer, employee, volunteer, agent, or other person may discuss or exchange price, cost, capacity, or other price-related information at any ASCRS meeting or at any formal or informal gathering of potential competitors.

2. No member, director, officer, employee, volunteer, agent, or other person may enter into any agreements regarding prices, costs, availability or efficacy of services, standards of care, division of markets, allocation of patients, or engage in any other activities that could be perceived as unreasonably restraining competition or otherwise violating the antitrust laws.
3. No member, director, officer, employee, volunteer, agent, or other person may sponsor or be a party to any agreements, express or implied, which restricts any member's freedom to make independent decisions regarding patient care.
4. No individual member, director, officer, employee, volunteer, agent, or other person may sponsor or be a party to any agreements, express or implied, which restricts any member's freedom to make independent business decisions for the member's practice.
5. No member, director, officer, employee, volunteer, agent, or other person may attempt to persuade government agencies or third-party payors to adopt practices or policies on the basis of misleading or knowingly false information or by other illegal or improper means.
6. No member, director, officer, employee, volunteer, agent, or other person may take actions denying membership to any person otherwise qualified for membership or discipline or expel any member without appropriate due process following the advice of legal counsel.
7. No member, director, officer, employee, volunteer, agent, or other person may speak or act on behalf of ASCRS, unless specifically granted such authority by the ASCRS Executive Council.
8. No member, director, officer, employee, volunteer, agent, or other person may issue or approve statements or adopt positions (public or otherwise) on behalf of ASCRS unless such statements or positions have been approved in advance by the ASCRS Executive Council.
9. No member, director, officer, employee, volunteer, agent, or other person may use ASCRS's letterhead or logo without the prior written consent of the ASCRS Executive Council.
10. No member, director, officer, employee, volunteer, agent, or other person may participate in sessions outside of regularly scheduled ASCRS meetings to discuss unauthorized or potentially anticompetitive activity.
11. Meeting Minutes shall be submitted for review by the President and a designated member of the ASCRS staff prior to distribution. Any substantial concerns related to motions should be reviewed by legal counsel.
12. Periodic written reports to the Executive Council are required from all ASCRS committees, staff, and officers reflecting pending matters, requests for action, and approvals for preliminary decisions. Such reports shall be submitted for review to the President and a designated member of ASCRS staff prior to distribution. Any substantial concerns related to reports should be reviewed by legal counsel.
13. ASCRS committees can only act within the scope of their express authority. Recommendations must be made to the Executive Council for approval of other actions they may wish to take.
14. A copy of this Policy shall be made available to all ASCRS members, directors, officers, employees, volunteers, agents, and meeting participants and the need to comply with its terms shall be communicated regularly.

15. ASCRS will provide a copy of this Antitrust Policy and the Antitrust Compliance Guidelines to each new Executive Council member and to each new employee within 30 days of hire.

## ANTITRUST COMPLIANCE GUIDELINES

Active participation in the American Society of Colon and Rectal Surgeons (“ASCRS”) is an important aspect of membership in ASCRS. Participation not only adds to the vitality and energy of ASCRS, but also furthers ASCRS’s mission of promoting excellence in the practice of colon and rectal surgery.

While the positive contributions of professional societies are well recognized and encouraged, society activities also are subject to close scrutiny under both federal and state antitrust laws. The single most significant law affecting professional societies is the Sherman Antitrust Act, which makes unlawful every contract, combination or conspiracy in restraint of trade. Because a professional society is, by nature, a group of competitors joined together for a common purpose, a professional society may satisfy what would ordinarily be a difficult element in proving an antitrust violation. As such, any society activity that could be perceived as a restraint of trade may expose ASCRS and its members to antitrust risk.

Historically, the most significant area of antitrust concern for professional societies has been price fixing. Price fixing is a very broad term which includes any concerted effort or action that has an effect on prices, costs, terms or conditions of trade, or on competitors. Accordingly, ASCRS members and leaders should refrain from any discussion which may provide the basis for an inference that they agreed to take action with respect to prices, services, allocation of markets, or any other matter having a market effect. These discussions should be avoided both at formal meetings and informal gatherings and activities. In addition, meeting participants should be sensitive to other matters that may raise particular antitrust concern for professional societies: membership restrictions, codes of ethics, or other forms of self-regulation or certification. The following are guidelines that should be followed at all ASCRS meetings, informal gatherings, and activities:

**DON’T** discuss your own or others’ prices or fees for service or anything that might affect prices or fees, such as costs, discounts, terms of sale, or profit margins.

**DON’T** discuss what you or other member physicians plan to do in particular geographic or product markets or with particular patients, including the elimination, restriction, or limitation of the quantity or quality of any service to be offered to patients or limitation of services to particular territories, customers, or groups of patients.

**DON’T** make public announcements or statements about your own prices, fees or costs, or those of competitors, at any ASCRS meeting or activity.

**DON’T** speak or act on behalf of ASCRS or any of its committees unless specifically authorized to do so.

**DO** conduct all ASCRS meetings in accordance with ASCRS’s antitrust compliance policy and other ASCRS rules.**DO** prepare meeting agendas in advance of meetings, and adhere to those written agendas.

**DO** ensure that the minutes of all meetings fully and accurately describe all actions taken at the meeting and only action items.

**DO** object to any discussions or meeting activities that appear to violate these guidelines. If the discussion continues, you should promptly excuse yourself from the group, insist that the minutes reflect your departure, and immediately communicate your objection to ASCRS's legal counsel.

**DO** alert ASCRS staff or legal counsel about any concerns regarding proposed actions or statements to be made by ASCRS or any committee or person acting on its behalf.

**DO** consult with ASCRS's legal counsel before making any statement that you think may involve competitively sensitive information.

**DO** ask ASCRS's legal counsel to review all written communications that may involve competitively sensitive information before they are distributed, including newsletters, letters, speeches, presentations, and communications.

**DO** be on the alert for improper activities and don't participate if you think something is improper. Adherence to these guidelines involves not only avoidance of antitrust violations, but avoidance of behavior which might be so construed. It is ASCRS's practice to be more cautious with respect to potentially sensitive competitive activities than the law requires.

Bear in mind that the antitrust laws are stated in general terms, and that these guidelines only provide an overview of prohibited actions. If you have specific questions, seek guidance from your own legal counsel or from ASCRS's Executive Director or legal counsel.

## IN-MEETING WARNING REGARDING ANTITRUST AND COMPETITION LAW

*Before we get started today, I want to confirm the boundaries of our discussion, particularly as it relates to compliance with antitrust and competition laws. All participants must refrain from discussing any of the following restricted subjects, whether in our meeting or during breaks or meals:*

*First, meeting participants may not discuss competitively sensitive topics, such as prices, pricing policies, commercial terms or conditions of treatment, costs, profits, or market shares. This includes exchanging actual current information regarding prices.*

*Second, meeting participants may not discuss whether or not—or on what terms they will—deal with specific suppliers, with classes of suppliers, or with specific third-party payors.*

*Third, and finally, keep today's discussion—whether in this room or during breaks—limited to the topics on the agenda. If you have any questions about these limitations or the restricted topics of discussion, please consult with legal counsel. If there is doubt about whether a topic is fair game for discussion, err in the direction of not discussing it.*

Policy Approved by Executive Council on April 18, 2018  
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