

Antitrust Policy

The Antitrust Laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. Because the Philadelphia County Medical Society (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 Society 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. A conviction can carry stiff fines for the Society and its offending leaders, jail sentences for individuals who participate in the violation, and a court order dissolving the Society or seriously curtailing its activities. The antitrust laws can be enforced against the Society, Society members, and the Society's 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, an executive 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 executive's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making him/her liable to as great a penalty 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, Society members should be free to make business decisions based on the dictates of the market – not the dictates of the Society.

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 general include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts. In addition, there are many features that factor into price; agreements as to warranty duration, freight terms, or other factors 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. These areas also should be approached with caution and legal guidance.

The Society has a policy of strict compliance with federal and state antitrust laws. Society members should avoid discussing certain subjects when they are together – both at formal Society membership, Board of Directors, committee, and other meetings and in informal contacts with other industry members – and should otherwise adhere strictly to the following guidelines:

- DO NOT agree to any Society membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or program having been approved by the Society's legal counsel.
- DO insist that the Society meetings that have agendas are circulated in advance and that minutes of all meetings properly reflect the actions taken at the meeting. All Society meetings generally should have written agendas prepared and circulated in advance.
- DO leave any meeting (formal or informal) where improper subjects are being discussed. Tell everyone why you are leaving.
- DO ensure that only Society staff sends out all written and electronic correspondence on behalf of the Society and that the Society officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of the Society when they do not, in fact, have such authority.
- DO ensure that if questions arise regarding the legal aspects of the Society's activities or your individual responsibilities under the antitrust laws, you seek advice and counsel from your own counsel or from the staff and counsel of the Society.

Any questions about the Society's Antitrust Policy should be directed to the Society's Executive Director.

I agree to abide by the Philadelphia County Medical Society's Antitrust Policy (Yes____ No _____)

CONFLICT OF INTEREST POLICY

The purpose of the Conflict of Interest policy is to protect the Philadelphia County Medical Society's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or director of the Society or might result in a possible excess benefit transaction.

This Conflict of Interest policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

This policy is also intended to identify "independent" directors.

I. Definitions

- a. **Interested Person.** Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- b. **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - i. An ownership or investment interest in any entity with which the Society has a transaction or arrangement;
 - ii. A compensation arrangement with the Society or with any entity or individual with which the Society has a transaction or arrangement; or
 - iii. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Society is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board or Executive Committee describes that a conflict of interest exists, in accordance with this policy.

- c. **Independent Director.** A director shall be considered "independent" for the purposes of this policy if he/she is "independent" as defined in the instructions for the IRS 990 form or, until such definition is available, the director –
 - i. is not, and has not been for a period of at least three (3) years, an employee of the Society or any entity in which the Society has a financial interest;
 - ii. does not directly or indirectly have a significant business relationship with the Society, which might affect independence in decision-making;

- iii. is not employed as an executive of another entity which any of the Society's executive officers or employees serve on that entity's compensation committee; and
- iv. does not have an immediate family member who is an executive officer or employee of the Society or who holds a position that has a significant financial relationship with the Society.

II. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board.

III. Recusal of Self. Any Board Member may recuse him/herself at any time from involvement in any decision or discussion in which the Board Member believes he/she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.

IV. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.

V. Procedures for Addressing the Conflict of Interest. An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The Board President shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the Board shall determine whether the Society can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board shall determine, by a majority vote of the disinterested Board Members, whether the transaction or arrangement is in the Society's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangements.

VI. Violations of the Conflicts of Interest Policy. If the Board has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board determine the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

VII. Records of Proceedings. The minutes of the Board and all committees with Board delegated powers shall contain:

- a. The names of the person(s) who disclose or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussion and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

VIII. Compensation. A voting member of the Board who receives compensation, directly or indirectly, from the Society for services is precluded from voting on matters pertaining to that member's compensation.

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Society for services is precluded from voting on matters pertaining to that member's compensation.

No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Society, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

IX. Annual Statements. Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflict of interest policy;
- b. Has read and understand the policy;
- c. Has agreed to comply with the policy; and
- d. Understands the Society is tax exempt and in order to maintain its federal tax exemption it must engaged primarily in activities which accomplish one or more of its tax-exempt purposes.

Each voting member of the Board shall annually sign a statement which declares whether such person is an independent director.

If at any time during the year, the information in the annual statement changes materially, the Board Member shall disclose such changes and revise the annual disclosure form.

The Board shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for effective oversight.

- X. Periodic Review.** To ensure the Society operates in a manner consistent with tax exempt purposes, and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic review shall, at a minimum, include the following subjects:
- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information (if reasonably available), and the result of arm's length bargaining.
 - b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to the Society's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax-exempt purposes, and do not result in inurement or impermissible private benefit or in an excess benefit transaction.
- XI. Use of Outside Experts.** When conducting the periodic reviews as provided for in Article X, the Society may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

ANTI-HARASSMENT POLICY

It is the policy of the Philadelphia County Medical Society to maintain a working environment free of sexual, racial, age-based, religious, ethnic, disability and other forms of legally impermissible harassment or discrimination of any Board Member, Member-at-large, employee, or applicant for employment.

Examples of impermissible harassment include, but are not limited to, use of sexual, racial, religious, age, or ethnic epithets or other derogatory words or actions based upon someone's sex, race, color, national origin, religion, age, physical or mental impairment. Such harassment in any manner or form by anyone is expressly prohibited. All reported or suspected occurrences of forbidden harassment will be promptly and thoroughly investigated. Where forbidden harassment has occurred, the Society will take appropriate disciplinary action, including without limitation, possible suspension or termination.

Definitions

1. **Sexual Harassment**: Sexual harassment has no place at the PCMS and will not be tolerated. Sexual harassment has been defined by the Equal Employment Opportunity Commission to be any unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
 - a. Submission to conduct is an explicit or implicit condition of employment;
 - b. Submission to or rejection of such conduct is used as the basis for an employment decision; or
 - c. Such conduct has the purpose or effect of:
 - i. Unreasonably interfering with an individual's work performance; or
 - ii. Creating an intimidating, hostile, or offensive work environment.
2. **Racial, Age-Based, Religious, Ethnic, Disability or Other Forbidden Forms of Harassment**: Forbidden harassment is best described as conduct which has the purpose or effect of:
 - a. Unreasonably interfering with an individual's work performance; or
 - b. Creating an intimidating, hostile, or offensive work environment.

Procedure for Reporting/Corrective Action

Any Board Member, Member-at-large, employee, or applicant for employment of the Philadelphia County Medical Society who feels harassed, or who knows of or suspects the occurrence of forbidden harassment is responsible for reporting such harassment to the CEO/Executive Director or to the Society's President. In the event of a conflict of interest or in the absence of the CEO/Executive Director or Society President, the information may be reported to the Society's President-Elect. The Society will then conduct a prompt and thorough investigation of the Complaint. The reporting party may be required to submit the Complaint in writing. Complaints will be investigated in a fair and impartial manner. The Complainant and the person complained about will be informed of the result of the investigation.

In the event a thorough investigation of a reported or suspected occurrence of harassment reveals that an individual has engaged in a form of harassment, the Society, based upon a preponderance of the evidence and its overall assessment of the seriousness of the violation(s), will either:

- a. Warn the individual that additional or further acts of harassment will result in further disciplinary action, including possible temporary suspension of Membership or employment of the Society, or
- b. Where there is extremely serious violation(s) of this policy, terminate or remove the individual from the Membership or employment of the Society. Examples of extremely serious violations include, without limitation:
 - i. Using the power or authority of a position to explicitly condition an employment decision upon the response of a Member, an employee (or applicant for employment) to a request for sexual favors; or
 - ii. Abusive physical actions to obtain sexual favors.

I agree to abide by the Philadelphia County Medical Society's Anti-Harassment Policy. (Yes_ No_)

Name of Board of Director

Date: _____

WHISTLEBLOWER POLICY

If any Member of the Society reasonably believes that some policy, practice, or activity of the Philadelphia County Medical Society (PCMS) is in violation of law, a written complaint must be filed by the Member with the Society's CEO/Executive Director or the Society's President.

It is the intent of PCMS to adhere to all laws and regulations that apply to the Society and the underlying purpose of this policy is to support PCMS' goal of legal compliance. The support of all Members is necessary to achieving compliance with various laws and regulations. A Member is protected from retaliation only if the Member brings the alleged unlawful activity, policy, or practice to the attention of the CEO/Executive Director or the Society's President and provides PCMS with a reasonable opportunity to investigate and correct the alleged unlawful activity. The protection described below is only available to Members who comply with this requirement.

The Society will not retaliate against Members who disclose or threaten to disclose to a Board Member or public body any activity, policy or practice of PCMS that the Member reasonably believes is in violation of a law, a rule, or regulation mandated pursuant to law or is in violation of a clear mandate of public policy concerning the health, safety, welfare, or protection of the environment.

I agree to abide by the Philadelphia County Medical Society's Whistleblower Policy. (Yes____ No ____)

Name of Board of Director

Date: _____