

## Illinois Association of Ophthalmology

### POLICY STATEMENT

#### *Guidelines for the Avoidance of Inadvertent Anticompetitive Conduct*

##### *Policy:*

The Illinois Association of Ophthalmology, with the advice of legal counsel, has adopted guidelines that must be followed to avoid inadvertent anticompetitive conduct that could be attributed to the Society. These guidelines shall apply to all of the Association's members, officers, directors, committee members, and representatives to other professional or governmental organizations, and employees.

##### *Background:*

The Supreme Court of the United States has held that a trade association would be liable under the federal antitrust laws for treble damages arising from unlawful acts of one of its representatives, even if those acts were not authorized by the organization, if the representative had the "apparent authority" (viewed from the perspective of outsiders) to speak or act in the name of and with the apparent endorsement or backing of the organization. The Court held that the appearance of authority could be created, for example, if the representative's unlawful acts were statements written on the organization's letterhead or if other writings or oral statements were made in the representative's capacity with the organization. The Court's holding applies to all membership organizations, including the Society.

##### *Evaluation:*

It is essential that all personnel and representatives of the Association be specifically aware of the types of conduct that could be found to constitute anticompetitive conduct and that they adhere to straightforward guidelines designed to avoid inadvertent anticompetitive conduct and the possible attribution of that conduct to the Society.

##### *Guidelines:*

Except when expressly authorized in advance by the Board of Directors of the Association or in a manner determined by the Board of Directors, the following guidelines shall prevail.

1. Discussions as described below shall not be conducted at any formal or informal meeting of the members, the Board of Directors, or a committee of the Association or by any Association representative to any formal or informal meeting of any other professional or governmental organization, and must be avoided in all other contacts with actual or potential competitors.
  - a) Discussions about, or that may have the effect of, fixing, raising, depressing, pegging, or stabilizing prices or fees; or any element of prices or fees; or establishing minimum or maximum prices or fees;
  - b) Discussions about, or that may have the effect of, either withholding patronage or services from or otherwise discouraging dealings with, or encouraging exclusive dealings with, any health care provider or group of health care providers, any supplier or purchaser or group of suppliers or purchasers of health care products or services, any actual or potential competitor or group of actual or potential competitors, or any patient, group of patients, or other segment of the public;
  - c) Discussions about, or that may have the effect of, allocating or dividing geographic or service markets, customers, or patients;

- d) Discussions about, or that may have the effect of, restricting, limiting, prohibiting, or sanctioning advertising, or soliciting that is not false, misleading, or deceptive;
  - e) Discussions about, or that may have the effect of, discouraging entry into or competition in any segment of the health care market;
  - f) Discussions about whether or not the practices of any member, actual or potential competitor, or other person are "unethical" or "anticompetitive"; and
  - g) Discussions about the safety, quality, or efficacy of the products or services of, or the prices or fees charged by, any health care provider or group of health care providers, any supplier or purchaser or group of suppliers or purchasers of health care products or services, or any actual or potential competitor or group of actual or potential competitors. This does not restrict or prohibit study and reasonable discussion and assessment of the safety or efficacy of technology, drugs, and devices.
2. Minutes shall be prepared and maintained for all meetings of the members, the Board of Directors and committees of the Society. Except for matters protected by the attorney-client privilege, all discussions conducted and all decisions reached at those meetings shall be reflected in the minutes of those meetings. Association representatives to other organizations shall take reasonable steps to ensure that minutes of the meetings of those organizations are prepared and maintained, except for matters protected by the attorney-client privilege, and that all discussions conducted and decisions reached at those meetings are reflected in the minutes of those meetings.
  3. No member, officer, director, committee member, representative, or employee of the Association shall have the authority to, or shall, issue any written statement on Association letterhead to anyone on any of the subjects enumerated in item 1 above.
  4. No member, officer, director, committee member, representative, or employee of the Association shall have the authority to, or shall, issue any oral or written statement to anyone on any of the subjects enumerated in item 1 above, in which or in connection with which the person issuing the statement identifies his or her affiliation with the Association or purports to act on behalf of, in the name of, or with the endorsement of or backing of the Association.
  5. Notwithstanding anything apparently or expressly to the contrary contained in the preceding items, a person who is affiliated with the Association and who has been specifically authorized by the Association or its Board of Directors or its Executive Committee to communicate in the name of and on behalf of the Association to representatives of the executive and legislative branches of government with respect to administrative or legislative proposals that are under consideration by those branches and are of direct concern to the Association, shall not be required to comply with item 3 or item 4 above with respect to any oral or written communication that satisfies the following conditions:
    - a) Is first approved by the Board of Directors or in a manner determined by the Board of Directors; and
    - b) Is related solely to the substance or merits of a proposal that is then the subject of administrative or legislative hearings or proceedings being conducted by the executive or legislative branch of government and that does or could, if adopted, relate to the science and art of medicine pertaining to the eye and related structures or to the provision of or in payment for services involving prevention, diagnosis, or treatment of disorders affecting the eye and related structures; and
    - c) Is made by that person as a participant in those hearings or proceedings and solely in connection with that participation; and

- d) Is made directly and solely to a representative of the executive or legislative branch of government who is a participant in those hearings or proceedings with copies of such communications provided only to persons designated by the Board of Directors of the Association or in a manner determined by the Board of Directors.
6. An exact copy of each written statement described in items 3, 4, or 5 above and an exact transcription of each oral statement described in items 4 or 5 above, whether or not the statement has been expressly authorized in advance either by the Board of Directors of the Association or in a manner determined by the Board of Directors, shall be furnished to the Association's Executive Director immediately after the statement is issued, together with a complete record of its distribution.

*Adopted by the Board of Directors 2009*

*Reaffirmed by the board of Directors: January 30, 2012*