

NATIONAL ASSOCIATION OF TRAVEL HEALTHCARE ORGANIZATIONS **ANTITRUST COMPLIANCE POLICY AND ORGANIZATIONAL GUIDE**

Purpose of this Policy

Antitrust and competition laws are used to foster and preserve free and open competition. Such laws are widely regarded by economists and business people as the, "cornerstone," of a free enterprise system. While differences in penalties and enforcement exist, strong antitrust and competition laws have been adopted in every major commercial jurisdiction in the world.

Antitrust laws seek to preserve a free competitive economy in the United States and in commerce with foreign nations. The penalties for violating the antitrust laws are severe; engaging in anticompetitive activities exposes the National Association of Travel Healthcare Organizations ("NATHO") members (both Associate and Full Members), their companies, and employees to criminal prosecution, as well as government and private civil suits. Agreements among competitors that unreasonably limit competition are unlawful under the antitrust laws, and violators are not only subject to potential criminal fines and jail time, civil fines and private litigation for treble damages—but, also substantial administrative disruption, defense costs, and adverse publicity. Examples of such illegal agreements by competitors are agreements to fix or stabilize prices, agreements to allocate territories or customers among themselves, and agreements to limit output or investments in innovation and regulatory compliance.

Trade associations, like NATHO, have long been recognized as serving a valuable, procompetitive and entirely lawful role in promoting the economic development and consumer welfare of our country. However, serious antitrust problems can arise if NATHO's activities are not conducted properly, or are allowed to become a vehicle for illegal agreements among competitors. Trade associations must be particularly concerned with antitrust laws because trade associations inevitably bring competitors together for meetings and other activities. For this reason, NATHO is committed to complying with all applicable antitrust laws, and recognizes that strong and clear compliance policies are critical to ensuring antitrust compliance.

The purpose of this document is to assist NATHO's Members and the Board of Directors in understanding how antitrust and trade regulations laws apply to the travel health care industry. Thus, it is vital that all NATHO meetings and business activities be conducted in a manner consistent with this policy.

This document is to serve as a reminder of NATHO's commitment to antitrust compliance and to provide general guidelines for conducting business in a manner that minimizes antitrust risks. When properly conducted, NATHO's activities play a valuable role in promoting free and open competition within the travel healthcare industry. Therefore, it is important to bear in mind that Members in attendance at NATHO meetings, or participating in other NATHO activities, are competitors of one another. Any discussion of subjects such as pricing or customers with one's competitors should be avoided at all times before, during, and after any NATHO meeting or activity. The Basic Antitrust Guidelines to be followed are outlined below.

BASIC ANTITRUST GUIDELINES

NATHO complies fully with the letter and the spirit of the antitrust laws. The basic guidelines below for NATHO Members to follow are designed to help achieve antitrust compliance. The summary points are not intended to answer every antitrust question or situation that might arise, but rather are meant to provide general guideposts. If you have any questions, you should consult counsel.

General Principles

There is no antitrust immunity for activities conducted through trade associations. If anything, there may be a higher level of antitrust scrutiny due to the opportunities for discussions among competitors. Thus, the following practices are either prohibited or strongly discouraged for NATHO Members:

- **Price Fixing Prohibited:** Section 1 of the Sherman Act prohibits competitors from restraining competition among themselves by agreeing to set or limit, for example, the price, production, or distribution of their products or services. Agreements among competitors to raise, lower, or stabilize prices are always illegal even if the price agreed is reasonable or beneficial to consumers, and even if the agreement is never put into effect. Competitors are expected to price their products and services independently and without cooperating with each other. To violate antitrust laws, these agreements do not need to be express or explicit, as courts frequently infer that agreements have been reached based on mere discussions about prices. Therefore, NATHO members are prohibited from discussing, fixing, or agreeing to fix, stabilize, lower, or raise prices in concert with competitors in any way. Ultimately, NATHO members should be wary of engaging in activities such as sharing pricing lists and other pricing information or intentions.
- **Group Boycotts Prohibited:** Agreements among competitors not to deal with a particular client or member can be illegal under antitrust laws. These agreements need not be explicit and can be inferred from the circumstances. Illegal boycott agreements are those that involve an association's efforts to use its collective economic control over the market to improve or maintain the income or profits of its own members. NATHO and its members are prohibited from entering group boycott agreements.
- **Territorial Allocation Agreements Prohibited:** Agreements not to compete in certain territories or for particular clients can also be illegal under antitrust laws. Therefore, NATHO members are prohibited from allocating or dividing territories or clients to exclusively service, and members are similarly prohibited from agreeing not to compete or to restrain competition for certain territories or certain clients.
- **Information Exchanges Should Be Made With Caution:** Members of NATHO are discouraged from exchanging information in relation to costs, pricing, and marketing plans. Evidence that information was exchanged between members of trade associations can be used to demonstrate that an unlawful agreement existed between those members. Although not all communications and information exchanges will amount to antitrust violations,

NATHO members should exercise an abundance of caution in refraining from exchanging competitively sensitive information to avoid even an appearance of impropriety.

Guidelines For Conducting NATHO Meetings

Certain meetings and interactions between or among members in furtherance of NATHO business are necessary for NATHO's legitimate goals. NATHO's meetings and other business interactions must be conducted in a manner to avoid even the appearance that members are taking common action, which might unreasonably restrain trade. As such, the following guidelines are set out for NATHO meetings and other member interactions in furtherance of NATHO business:

- Each NATHO meeting or other gathering in furtherance of NATHO business must be conducted according to the NATHO by-laws, and pursuant to notice and a written agenda, both of which are to be sent to all those who will be in attendance in advance.
- The notice and agenda must be specific enough to alert members and the staff of the matters that may raise legal questions for which the advice of counsel may be sought prior to the meeting.
- The meetings must be strictly confined to the topics set out in the agenda.
- Minutes of all NATHO meetings and formal business gatherings must be kept, and no "off the record" discussion will be allowed at any business meeting.
- The following may not be discussed at NATHO meetings or business gatherings in furtherance of NATHO business: (a) members' current or future prices, including discounts, rebates, and credit terms; (b) the possibility or desirability of members limiting their provision of any service or product in any geographic area; (c) allocation or division of clients or territories among competitors; (d) reasons why NATHO members should refuse to deal with a particular candidate, client, or travel healthcare company; (e) whether the pricing or practices of a competitor are "unethical" or constitute an unfair trade practice; (f) efforts to influence prices or means of competition of another NATHO member; (g) what constitutes a "fair" profit margin; and (h) price lists or procedures for coordinating price changes.
- Prohibited discussion topics shall not be discussed by members informally, and all discussions at meetings should be conducted within the meetings minutes;
- All members should be given an opportunity to express their views at a meetings;
- The following topics may be appropriately discussed at meetings if properly included in the agenda : (a) general industry or economic trends; (b) advances or problems in relevant technology or research; (c) more effective methods or purchasing, manufacturing or marketing; (d) management education/training; (e) industry relations with local, state and federal governments; (f) experiences and developments in employment relations; (g) legal issues facing the industry and Association members.