



NABIP's Code of Ethics & Antitrust Overview

Federal antitrust laws have an important bearing on membership policies and disciplinary proceedings of professional associations. The services and activities of an association like ours provide economic benefits to its members – in our situation, benefits professionals. Expulsion from an association or denying the right to be a member in some other way is held to place the individual at an economic disadvantage relative to other association members. Such a denial of the right to membership can be construed as a restraint of trade and a violation of the antitrust laws. For that reason, NABIP holds its Code of Ethics to be aspirational – a code that is aspired to but not one that is actively enforced.

In addition to potential antitrust liability were we to attempt to enforce our Code of Ethics, NABIP would have potential exposure to defamation and other claims. Statements that might be made in terms of the reasons for our actions, whether true or false, could constitute intentional infliction of economic harm. The penalties for violating these laws are severe, with the possibility of both civil and criminal charges. An individual may be fined up to \$1 million and a corporation up to \$100 million if found to have violated the antitrust laws. If violations are considered egregious, jail sentences up to ten years can be imposed. Additionally, there are civil penalties available to government antitrust enforcement agencies such as a cease and desist order and dissolution of our association. In addition to government enforcement of the antitrust laws, an individual or company that suffers injury as a result of an antitrust violation may file a private suit against the violator and recover treble damages.

Another type of question frequently asked concerns actions taken by insurers relative to contracts or commission levels. NABIP is not a union, and we are prohibited from negotiating with insurers on behalf of our members. In addition, the antitrust laws prohibit NABIP or a state or local chapter from discussing agent/broker compensation or contracts (and other similar actions) with carriers. The antitrust laws require agents and brokers to make certain decisions by themselves, and not in conjunction with each other. Discussions relative to commission levels or what a fair commission level is are prohibited, as is any mention of refusing to deal with or boycotting an insurer. NABIP's Board of Trustees acknowledges the following antitrust statement at every meeting it holds. It is highly recommended the chapters follow the same practice.

"Associations are subject to strict scrutiny under antitrust laws because an association is, by its nature, a group of competitors joined together for a common business purpose. The antitrust laws require companies to make certain decisions by themselves, not in conjunction with competitors. Therefore, associations and their members must proceed with extreme caution in certain areas of activity to insure against violation of the antitrust laws. Discussions of current or future prices or commissions and refusing to deal with or boycotting any insurance carrier are among a number of areas specifically prohibited by the anti-trust laws and will not be permitted in today's meeting."

What can be done if it is believed someone is not behaving in an ethical manner? Whether the party committed the wrongful act is an insurer or a competitor, if it is believed the actions taken constitute illegal behavior, go to the relevant regulatory authority with a complaint. If the area is gray and there is a feeling that the party in question is being allowed to do things other competitors would not be permitted to do, the regulatory authority has the final authority as to whether a particular action is or is not permissible under the law.

Violation of the antitrust laws would prevent us from providing you with the services you need to succeed in your business. **Our strongest desire is to help you be more successful. Please visit our website or ask us how we can help you achieve your goals in the coming year.**