

# Association for Molecular Pathology

## POLICY

### Antitrust Compliance

Board of Directors Approval Date: 9/26/2023

Version #: 01

**Introduction:** The antitrust laws are designed to ensure that business is conducted in an open, competitive atmosphere and that competition is not unreasonably or unfairly restricted. These laws prohibit any agreement, conspiracy, or combination that may result in an unreasonable restraint of trade or an injury to competition. AMP members may be considered to be competitors for purposes of antitrust challenges even if their practices are not in the same geographic areas. The penalties for violations of the antitrust laws are severe for both associations and their members.

**Policy:** AMP has a policy of strict compliance with federal and state antitrust laws. AMP members will adhere to the guidelines outlined here and will avoid discussing prohibited behaviors when they are together – at AMP conferences, at meetings (e.g., Board of Directors, committee, and other meetings), and in informal contacts with other members.

AMP meetings will generally have agendas circulated in advance and minutes of meetings will properly reflect the actions taken at the meeting.

AMP staff will send out all written and electronic correspondence on behalf of AMP. AMP officers, directors, committee members, and other members will not hold themselves out as speaking or acting with the authority of AMP when they do not, in fact, have such authority.

The following types of agreements, whether by AMP or its members, would be deemed to constitute anti-competitive behavior and are therefore prohibited:

- Agreements to set prices / pricing, including agreements on the terms and conditions which affect the price of a product or service;
- Agreements to control or limit the production of a product or service;
- Agreements to engage in a group boycott or a refusal to deal with certain competitors, suppliers, insurers, or patients.

An anti-competitive agreement does not have to be express and can be established by circumstantial evidence such as the subsequent behavior of participants at the meeting.

Membership requirements must be substantially related to AMP's purpose, reasonable, non-discriminatory, and applied in a uniform manner. Disciplinary procedures must protect the member's due process rights and must be uniformly followed.

At AMP events, meetings, or on communications platforms:

- DO NOT discuss anything that can impact (raise, lower or stabilize) prices of laboratory products or services, e.g., charges, fees, discounts, terms and conditions of sale, or profit

margins. Price fixing may occur between competitors (“horizontal”) or between suppliers and customers (“vertical”). Price fixing can be either express or implied and may be inferred from price-related discussions followed by parallel decisions on pricing by association members .

- DO NOT agree with competitors as to what salaries you will pay, uniform terms of sale, warranties, or contract provisions.
- DO NOT exchange data regarding current or future prices or fees for products or services because such actions can have a substantial impact on price and therefore be deemed price fixing.
- DO NOT discuss refraining from selling certain products or services and do not discuss customers or groups of customers to which certain products and services are not to be sold or provided. Any agreement to control or limit the number of laboratory products and services is *per se* illegal under the antitrust laws.
- DO NOT discuss boycotting or refusing to deal with certain competitors, insurers, suppliers, customers, clients, patients, or groups of same. Any attempt by AMP members to use the collective power of the association to boycott a competitor, insurer, supplier, or a patient will violate the antitrust laws. Discussion concerning the pros and cons of further dealings with any common competitor, insurer, supplier, customer, client, or patient must be avoided at all AMP functions.
- DO NOT discuss allocating patients, territories, or markets in which AMP members sell, may sell, or refuse to sell their products and services. Agreements among AMP members to divide or allocate patients or markets are *per se* violations of the antitrust laws. Even an informal agreement by which one member promises to stay out of or to avoid another member’s territory or promises to refrain from doing business with certain patients and/or customers or promises not to offer certain types of products or services constitutes an antitrust violation. AMP meetings cannot be used by members to discuss and determine when, where and to whom members will sell or offer their products and services.
- DO NOT discuss profits, profit margins, market research, market shares, or other current or future business matters that may affect competition.
- DO NOT discuss or disclose non-public, competitively sensitive information or trade secrets concerning your company, firm, or institution.
- DO leave any meeting (formal or informal) where improper subjects are being discussed. Tell everyone why you are leaving.

The following areas of discussion can be undertaken by members participating in AMP functions or activities without raising substantial antitrust concerns:

- YOU MAY discuss common problems and challenges so long as the purpose is not to eliminate competition or encourage uniform action that can impact prices.

- YOU MAY discuss problems with certain types of insurer, supplier, customer, client, or patient so long as the focus is not on boycotting or refusing to deal with such insurers, suppliers, customers, clients, or patients.
- YOU MAY discuss risks relating to certain types of patients, suppliers or insurers so long as there is not an attempt to fix prices or the terms of doing business.
- YOU MAY discuss the policies or practices of certain suppliers or insurers so long as there is no threat, direct or indirect, to act jointly to enforce changes to those policies or practices.
- YOU MAY participate in sharing business information and data with competitors only within accepted legal parameters, which generally require that the information cannot be current or forward looking if it is competitively sensitive (e.g., pricing, profit levels, business plans, trade secrets); the information to be shared is submitted only to a third party administrator; and the administrator processes the information and reports it to participants and others in an anonymized and aggregated form.
- YOU MAY discuss and agree on joint or unified positions for the purpose of dealing with and/or petitioning governmental bodies and regulatory agencies, including advocating before the Centers for Medicare & Medicaid Services on the Medicare clinical laboratory and physician fee schedules.
- YOU MAY discuss the agenda or the minutes of prior meetings because minutes must accurately reflect the actions taken at the meetings and the agenda that was followed.

Any questions about the legal aspects of AMP’s activities, your individual responsibilities under the antitrust laws, or AMP’s antitrust policy should be directed to AMP’s Executive Director or Director of Operations.

**Definitions:** None

**Related Policies:**

- Express Authority
- Membership Eligibility
- Statement of Fiduciary Responsibility

**Revision History:**

Version	Approval Date	Author	Summary of Changes
01	9/26/2023	M. Williams & H. Webster	New