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APA and APAPO Antitrust Policy for Listservs

It is the policy of the APA and APA Practice Organization policy to comply with antitrust laws. APA and APAPO listservs pose heightened antitrust concerns because they often involve discussions between psychologists who are economic competitors, and because discussions can quickly develop into inappropriate communications that may expose the national organizations to antitrust danger before those monitoring the list are aware of it.

Because listservs pose greater risks, the rules must be stricter than in other contexts. For example, while no discussions of fees set by psychologists are permitted on listservs, when done properly, there is little antitrust risk to letting state and local psychological associations post individual psychologists' fees for viewing by consumers in the more controlled environment of an association website.¹

Users of APA and APA Practice Organization listservs are reminded of the following antitrust compliance rules. The examples provided are for illustration and are not meant as an exhaustive list.

If you believe that this policy is being violated on a state association or APA Division list, please contact the association's or division's executive director, listmaster, or other appropriate officer or staff.

A. Fee Discussions

1. There should be no discussion of a) the fees set by psychologists; b) actual or implied agreements between psychologists on setting fees; or c) psychologists' individual fee negotiations with an insurance company or other third party payor.

¹It is relatively safe for a state or local psychological association to post on its website the fees that psychologists set for their services, so long as that information is available to the public. In doing so, the association should stress the need for individual practices to set their prices independently and be explicit that the association plays no role in setting prices but is only posting information provided by its members. However, this view does not constitute legal advice or a legal opinion.

Examples of what is **not** OK:

I charge \$190 for an initial evaluation.

What is the going rate in this city for CPT Code 90801?

Most psychologists I know charge from \$180 to \$230 for that kind of assessment.

Given the cost of doing business in this region, isn't it clear that no psychologist can survive charging less than \$150?

I was able to negotiate a better rate with Company Y than their standard rate.

2. Generally applicable fees set and announced by insurers or other third party payors **may** be discussed -- as long as the discussion is not accompanied by any commentary stating or implying: (a) that other psychologists should not accept the rate or should not deal with the payor (see also Section B below on boycotts) or (b) what the rate should be.

Examples of what is OK (when not accompanied by improper commentary):

Did you hear that Company A is now paying \$110 for 90808?

Medicare announced that its rate in this area for CPT Code X will now be \$113.50. Company Z pays \$105 for the same code.

Examples of what is **not** OK:

Company X's new rate of \$93 is unacceptable.

If Company Y goes forward with that rate cut, a lot of psychologists are going to leave its network.

I can't believe Company Z is only paying \$90 for that code. If you adjust what they paid in 1990 for inflation, we'd be getting \$150 instead.

3. There should be no discussion suggesting that a psychological association can or should negotiate fees on behalf of members.

Example of what is **not** OK:

Let's have the state association get together with the company and explain to them what would be a fair rate to pay us.

4. There should be no discussion of specific economic factors that would allow psychologists to ascertain rates charged by competing psychologists, or to agree on staff wages or salaries they will pay, such as:

- a. levels of profit margins or mark ups;
- b. wages or salaries paid to staff;
- c. the amount of time typically spent performing services, where reimbursement is directly dependent on time spent.
- d. detailed discussion of specific costs of operations, supplies, labor or services that would allow a psychologist to ascertain what rates are charged by competing psychologists.

It is appropriate, however, to discuss methods of operation and similar matters that may assist psychologists in practicing more efficiently and effectively.

Examples of what is **not** OK:

We expect a 10% profit margin on 90801.

For our 3-person office, we pay our administrative/billing person 18K a year for 20 hours a week.

Company X is cutting back on the time allowed for Neuropsych test ABC. Can everyone let me know how long they typically take to administer and score that test? The association wants to let the company know what is a reasonable time to for that test.

To administer test ABC, our practice figures that the key costs are \$25 for the test packet, \$75 of test tech time and \$200 for the psychologist to analyze the results and write a report.

B. Boycotts.

There should be no discussions that state or imply that psychologists should boycott or otherwise agree or act together to not participate with a particular insurer or other third party payor. This rule applies *even if the boycott is based on factors other than fees*. Each

member should make his/her own decisions regarding the insurers with which they will participate.

Examples of what is **not** OK:

Nobody should sign Company X's new provider contract until the company clarifies what the termination provision means.

When contract renewal time comes, let's show Company Y what our membership thinks of their new policy on records audits.

C. Competition.

It is a violation of antitrust laws to agree not to compete. Thus, discussions of division of territories or customers, or limitations on the nature of business carried on or services provided are not permitted.

Examples of what is **not** OK:

Maybe we could all trim our marketing budgets if we each just advertised in our respective counties and just treated local clients.

Instead of us fighting over the same client base, why doesn't our group just take child and adolescent patients and your group take the adults?