

# POLICY STATEMENT

## ANTITRUST

(as approved by the Board of Directors October 23, 2014)

### Policy 2.02

#### Background

Medical Group Management Association and its affiliates, including the MGMA Center for Research, MGMA Realty Corp. and ACMPE Scholarship Fund, Inc. (Collectively "MGMA"), continuously seek to advance the management of medical group practices in order to improve the delivery of health care.

MGMA is committed to compliance with federal and state antitrust laws. MGMA expects employees, volunteers, and others acting on its behalf to comply with these laws, to observe the guidelines set forth in this Policy Statement, and to ask appropriate officials of the organization whenever there is any question about the legality of some practice. It is the responsibility of each individual acting on behalf of MGMA to make sure that his or her actions are consistent with the antitrust laws.

#### Antitrust Laws

The penalties are severe for violations of the antitrust laws. Individuals are subject to prison sentences of up to ten years. At times in the past, persons who pleaded guilty were usually placed on probation, and persons found guilty at trial were given light sentences. More recent practice is different: persons who plead guilty will generally serve at least six months in prison, and persons found guilty after a trial can expect an even longer period of incarceration. A company is subject to a fine of up to \$100,000,000.

Additionally, individuals and the company are subject to civil lawsuits in which an injured party may obtain damages, multiplied by three, and its attorneys' fees. It should go without saying that any individual who is found to have participated in an antitrust violation will be subject to dismissal from his or her employment or relationship with MGMA.

The following description of the antitrust laws is necessarily very general and is meant primarily to raise "red flags" regarding prohibited activities. Whenever an individual is uncertain about whether some action might have antitrust consequences, he or she should immediately contact legal counsel for MGMA for clarification. Additionally, it is MGMA policy that each individual acting on its behalf should alert legal counsel of any activity that is believed might be a violation of the antitrust laws.

The principal antitrust statutes of the United States are the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. Many states have statutes which replicate the prohibitions of the federal acts and in some circumstances exceed them. For purposes of this policy statement, the exact language of the various statutes is less important than their general prohibitions. For that reason, this policy statement focuses on the business situations that should be avoided rather than the wording of the statutes themselves.

#### Relationships Among Competitors

Because MGMA operates as a trade association for managers of medical group practices, MGMA, its members and individuals acting on their behalf should avoid even the appearance of improper

discussions among competitors. MGMA must not become involved in the competitive business decisions of its individual members.

The following is a list of types of prohibited discussions among competitors.

1. Price Discussions. Employees or other individuals acting on behalf of MGMA are prohibited from facilitating discussions of or discussing pricing with or among competitors. The antitrust laws prohibit agreements with competitors on prices to be charged to customers. Individuals acting on behalf of MGMA should not discuss with competitors any information involving prices or the components of prices, costs of services, costs, discounts, fees, reimbursement rates, profits or overhead, without first obtaining advice from legal counsel. The courts have interpreted the concept of an agreement very broadly and have not limited it to a formal understanding like a contract or even to an arrangement in which both parties indicate informally that they will follow a common plan. Individuals acting on behalf of MGMA and MGMA members may discuss with competitors general management issues and clinical aspects of medical group practices.

2. Discussions of Customer or Market Allocation. Employees or individuals acting on behalf of MGMA must not facilitate discussions among or discuss with competitors allocating customers or geographic territories. The same broad rules that apply to discussion of price information apply here. There must be no agreements or discussions with competitors about who will sell to which customers, about the geographic territory that each competitor will cover, or about a willingness to use less than best efforts with some customers or territories.

3. Refusals To Deal. Employees or individuals acting on behalf of MGMA must not agree, facilitate discussions among, or discuss with competitors refusals to deal with a customer or group of customers, particular providers, suppliers or third-party payers. Illegal refusals to deal might take various forms, including:

- (1) A recommendation by MGMA that its members withdraw from contracting with a third-party payer (group boycott);
- (2) An MGMA resolution that its members should not participate in a third-party payer's plan or prohibiting members' participation in the plan;
- (3) An MGMA recommendation that its members not disclose certain patient medical information requested by a third-party payer;
- (4) MGMA members pledging that they will not submit patient information requested by a third-party payer;
- (5) An MGMA recommendation that its members protest or challenge every reimbursement made by a third-party payer

Whether a medical group decides to provide services to a particular customer or receive products or services from a particular supplier or provider must be the unilateral decision of that medical group and not the result of conversations with or among competitors.

Trade Associations: Exchange of Information and Standardization

There are two additional areas of antitrust concern that involve trade associations: exchange of information and standardization. Many trade associations exchange information among members about safety, costs, and sometimes even past prices. While this activity may be permissible, legal counsel should be consulted before any information is exchanged because this activity is always sensitive. Trade associations may also work for product and work standardization, particularly relating to safety issues. This activity may be permissible, but legal counsel should be consulted and kept advised.

### Conclusion

It is the responsibility of each member, employee, volunteer, or other individual acting on behalf of MGMA to understand and comply with this antitrust policy statement. If situations arise in which an individual has concerns about the antitrust implications of certain conduct, he or she should contact legal counsel for guidance.