

# CTChiro

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## ANTITRUST COMPLIANCE PROGRAM AND PROCEDURES

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## Table of Contents

<b>I. Introduction .....</b>	<b>3</b>
<b>II. Antitrust Compliance Policy and Code of Conduct .....</b>	<b>4</b>
<b>III. Enforcement of Antitrust Compliance Policy and Code of Conduct .....</b>	<b>10</b>
<b>IV. Antitrust Compliance Committee/Antitrust Compliance Officer.....</b>	<b>10</b>
<b>V. Training and Education Programs.....</b>	<b>13</b>
<b>VI. Documentation, Record-Keeping and Regulatory Reports.....</b>	<b>15</b>
<b>VII. Reporting Compliance Issues .....</b>	<b>17</b>
<b>VIII. Government Investigations .....</b>	<b>18</b>
<b>Appendices .....</b>	<b>19</b>

## I. INTRODUCTION

The Connecticut Chiropractic Association, Inc. (the “CCA”) is committed to conducting itself in accordance with the highest level of business and community ethics and in compliance with applicable governing laws. In 2008, the CCA entered into a Stipulated Judgment and Release and the Agreement Containing Order to Cease and Desist with the Office of the Attorney General of the State of Connecticut (the “OAG’s Stipulated Judgment and Release”) (APPENDIX A) and a Consent Agreement and Related Decision and Order with the Federal Trade Commission (the “FTC’s Consent Agreement”) (APPENDIX B) to settle allegations that the CCA, acting in combination with the Connecticut Chiropractic Council (the “CCC”) and the CCA’s attorney, Robert L. Hirtle, violated the antitrust laws by, among other things, conspiring to fix or increase prices paid for chiropractic services and to boycott third-party payers. Copies of these and related documents are available at the CCA’s website (<http://www.ctchiro.com>). While the CCA has expressly denied the allegations made by the OAG and FTC, and has made no admission of liability or wrongdoing, the CCA is required to cease and desist from a variety of actions, and to document its compliance with the settlements and the antitrust laws. It is the CCA’s intent to exert its best efforts to comply with the antitrust laws and the terms of the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement by implementing and enforcing its Antitrust Compliance Program, its Antitrust Compliance Policy and Code of Conduct (*see* Section II and APPENDIX C). The CCA will not tolerate activities by its officers, directors, members, employees, representatives or agents that fail to comply with the letter and spirit of the settlement terms or the antitrust laws generally. For further information on the specific requirements imposed by those settlements, please refer to the CCA’s website.

CCA’s Antitrust Compliance Program has been developed in accordance with applicable laws, with guidance from state and federal authorities, including the Office of the Attorney General for the State of Connecticut and the Federal Trade Commission, as well as the federal and state antitrust and trade regulation laws established pursuant to the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act and the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-24 *et seq.* With this Antitrust Compliance Program, CCA will promote full compliance with all legal duties applicable to it, foster and assure ethical conduct, and provide guidance to each officer, director, member, employee, representative and agent of CCA for his/her conduct.

This Antitrust Compliance Program is designed to prevent accidental and intentional non-compliance with applicable antitrust laws, the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement, to detect such non-compliance if it occurs, to discipline those involved in non-compliant behavior and to prevent future non-compliance. The procedures and standards of conduct contained in this Antitrust Compliance Program are intended to generally define the scope of conduct which the Antitrust Compliance Program is intended to cover and are not to be considered as all inclusive.

All questions and concerns regarding compliance with the standards set forth in this Antitrust Compliance Program should be directed to or brought to the attention of the CCA’s Executive Director, the Antitrust Compliance Officer or CCA’s General Counsel. All CCA officers, directors, members, employees, representatives and agents must fully cooperate and assist the Executive Director, Antitrust Compliance Officer, and Antitrust Compliance Committee as required in the exercise of her, his or their duties. If a CCA officer, director, member, employee, representative or agent is uncertain whether specified conduct is prohibited, he or she shall contact the Executive Director, Antitrust Compliance Officer, CCA’s General Counsel, his or her own counsel, or the Office of the Attorney General for guidance prior to engaging in such conduct.

## **II. ANTITRUST COMPLIANCE POLICY AND CODE OF CONDUCT**

The Connecticut Chiropractic Association (the “CCA”) is a not-for-profit organization. The CCA is not organized to and may not play any role in the competitive decisions of its members or their employees, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of diverse opinions without in any way attempting to encourage or sanction any particular business practice.

The CCA provides a forum for exchange of ideas in a variety of settings including its annual meeting/membership meeting, educational programs, committee meetings, and Board meetings. The Board of Directors recognizes the possibility that the Association and its activities could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this policy statement clearly and unequivocally supports the policy of competition served by the antitrust laws and to communicate the Association's uncompromising policy to comply strictly in all respects with those laws. These laws prohibit activities that illegally restrain or reduce competition, control prices, allocate markets, or result in boycotts, specifically with respect to activities, negotiations and interactions with competitors and/or payers. In addition, the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement prohibit specific conduct by, between and among the CCA, its officers, directors, members, employees, representatives and agents, which could lead to or constitute an antitrust violation.

While recognizing the importance of the principle of competition served by the antitrust laws, the Association also recognizes the severity of the potential penalties that might be imposed on not only the Association but its members as well in the event that certain conduct is found to violate the antitrust laws. Should the Association or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment for up to 3 years as well as fines up to \$350,000 for individuals and up to \$10,000,000 for the Association. In addition, damage claims awarded to governmental agencies and or private parties to a civil suit may be tripled for antitrust violations, and attorneys’ fees are also available to a successful claimant. Given the severity of such penalties, the Board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.

The following legal standards, code of conduct and guidelines are intended to ensure the CCA’s strict adherence with the federal and state antitrust laws, the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement, and to assist the CCA with our compliance with these important laws and pronouncements.

### **A. Legal Standards Applicable to Antitrust Compliance**

The following legal standards will be observed relative to compliance with the antitrust laws:

1. No CCA officer, director, employee, representative or agent may, directly or indirectly, or through any corporate or other device, in connection with the provision of chiropractic services:
  - a. Enter into, adhere to, participate in, maintain, organize, implement, enforce or otherwise facilitate any combination, conspiracy, agreement, or understanding

between or among any chiropractors with respect to the provision of chiropractic services:

- i. to negotiate on behalf of any chiropractor with any payer regarding any term, condition, or requirement upon which any chiropractor deals, or is willing to deal, with any payer, including, but not limited to, price terms; or
  - ii. to deal, refuse to deal, or threaten to refuse to deal with any payer.
- b. Request, propose, urge, advise, recommend, advocate, or attempt to persuade in any way any chiropractor to deal or not deal with a payer, or accept or not accept the terms and conditions, including, but not limited to, price terms, on which the chiropractor is willing to deal with a payer;
- c. Exchange or facilitate in any manner the exchange or transfer of information among chiropractors concerning any chiropractor's willingness to deal with a payer, or the terms or conditions, including price terms, on which the chiropractor is willing to deal with a payer;
- d. Organize, sponsor, facilitate or participate in any meeting or discussion that the CCA expects or reasonably should expect will facilitate communications concerning one or more chiropractors' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;
- e. Continue a formal or informal meeting that the CCA expects or reasonably should expect will facilitate communications concerning one or more chiropractors' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;
- f. Continue a formal or informal meeting of chiropractors after any person makes any statement concerning one or more chiropractors' intentions or decisions, that if agreed would violate the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement, unless the CCA immediately ejects such person from the meeting;
- g. Continue a formal or informal meeting where the CCA knows or reasonably should know that two or more persons are communicating concerning one or more chiropractors' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;
- h. Attempt to engage in any action prohibited by the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement; and/or

- i. Encourage, suggest, advise, pressure, induce, or attempt to induce any person to engage in any action that, if taken by the CCA, would be prohibited by the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement.

**B. Officer, Director, Member, Employee, Representative and Agent Obligations Relating to Antitrust Compliance**

**1. Mandatory Compliance with Laws**

Compliance with and promotion of strict adherence to the federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement is a condition of membership, appointment, employment, association or affiliation with the CCA. All officers, directors, members, employees, representatives and agents shall be required to review and sign the CCA Antitrust Policy and Code of Conduct. (See APPENDIX C)

In addition, both the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement contain specific provisions governing the conduct of meetings, and the obligation of the CCA to eject persons from meetings and/or terminate meetings under certain circumstances. You must familiarize yourself thoroughly with the requirements of the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement. (See APPENDICES A and B and visit the CCA website for detailed and current advisories on the topic of antitrust: <http://www.ctchiro.com>.)

Certain activities of the Association and its members are deemed protected from antitrust laws under the First Amendment right to petition government. The antitrust exemption for these activities, referred to as the Noerr-Pennington Doctrine, protects ethical and proper actions or discussions by members designed to influence: 1) legislation at the national, state, or local level; 2) regulatory or policy-making activities (as opposed to commercial activities) of a governmental body; or 3) decisions of judicial bodies. However, the exemption does not protect actions constituting a "sham" to cover anticompetitive conduct. At all committees, educational meetings, or other business meetings of the CCA, speakers and participants will be informed about the CCA's Antitrust Policy through the CCA's Antitrust Statement, attached as APPENDIX D.

CCA, its officers, directors, employees, representatives and agents shall establish and maintain an antitrust training and education program (the "CCA Antitrust Training and Education Program"), completion of which shall be required for all officers, directors, members, employees, representatives and agents of the CCA. Such training and education program shall cover compliance with federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement, in addition to all pertinent regulatory pronouncements relative to antitrust compliance and enforcement. A copy of the CCA Antitrust Training and Education Program is attached as APPENDIX E, as same may be amended, from time to time.

## **2. Prohibited Conduct**

No officer, director, member, employee, representative or agent of the CCA has any authority to act contrary to the provisions of the OAG's Stipulated Judgment and Release, the FTC's Consent Agreement, the antitrust laws or CCA's standards of conduct or to authorize, direct or condone violations by any other officer, director, member, employee, representative or agent. Any officer, director, member, employee, representative or agent who violates these laws and/or regulations not only risks individual indictment, criminal prosecution and penalties, civil actions for damages and penalties and administrative sanctions, but also may subject CCA to the same risks and penalties. Any CCA officer, director, member, employee, representative or agent who violates these laws may be subject to immediate termination of his or her membership, appointment, employment, association or affiliation with the CCA.

## **3. Examples of Prohibited Conduct**

Examples of activities and conduct which potentially could run afoul of the antitrust laws include arrangements or agreements by, between and among chiropractors to boycott or refuse to deal with managed care organizations or other third-party payers; to allocate patients, markets or territories; or joint restriction of advertising or marketing efforts.

- a. The association or any committee, district, or activity of the Association shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors with regard to prices or terms and conditions of contracts for services or products. Therefore, discussions and exchanges of information about such topics will not be permitted at Association meetings or other activities.
- b. There will be no discussions discouraging or withholding patronage or services from, or encouraging exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services, any actual or potential competitor or group of actual potential competitors, or any private or governmental entity.
- c. There will be no discussions about allocating or dividing geographic or service markets or customers.
- d. There will be no discussions about discouraging entry into or competition in any segment of the marketplace.

## **4. Reporting Suspected or Known Violations**

CCA and its officers, directors, members, employees, representatives and agents shall not knowingly and willfully make or cause to be made any false statement or representation of material fact in any report to a governmental agency with respect to CCA's antitrust compliance activities.

Any officer, director, member, employee, representative or agent of the CCA who has knowledge of activities that he or she believes may violate the OAG's Stipulated Judgment and Release, the FTC's Consent Agreement, antitrust laws, or the CCA's Antitrust Compliance Policy or Code of Conduct, should consider, upon becoming aware of such activities, promptly reporting the matter to the CCA's Executive Director, the CCA's Compliance Officer, the CCA's General Counsel or the Office of the Attorney General, Assistant Attorney General Michael Cole, Chief, Antitrust Department, 55 Elm Street, Hartford, CT 06106 at (860) 808-5040. Reports may be made anonymously but reporters are encouraged to identify themselves to facilitate follow up investigation and substantiation of concerns. Reporters will not be penalized, sanctioned or retaliated against in any way.

**5. Antitrust Compliance Program Notifications, Education, Training and Record-Keeping Activities**

- a. Speakers/Exhibitors at committee meetings, educational meetings, or other business meetings of the Association shall be informed that they must comply with the Association's antitrust policy in the preparation and the presentation of their remarks. Meetings will follow a written agenda approved in advance by the Association or its legal counsel. The appropriate CCA Antitrust Statement (APPENDIX D) will be presented at the commencement of each such meeting. All attendees at such meetings shall be required to sign-in on the CCA Attendance Sign-in Sheet (APPENDIX F).
- b. CCA shall conduct regular education and training sessions for all officers, directors, members, employees, representatives and agents as necessary to keep them informed of the current federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement, and in accordance with Section \_\_ of the CCA's Compliance Program.
- c. CCA shall maintain proper records of its compliance with the federal and state antitrust laws and as required by the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement, and in accordance with Section \_\_ of the CCA's Compliance Program.

**6. Privileged Communications with CCA's General Counsel**

Whenever an officer, director, member, employee, representative or agent of the CCA is seeking legal advice concerning the CCA or its operations and activities, he or she may address any communications concerning such advice directly to the CCA's General Counsel: Attorney Mary Alice Moore Leonhardt, 67 Russ Street, Hartford, CT 06106, (860) 727-8874. Please be aware that copying and/or forwarding the communication to anyone who is not a director, officer, or employee of the CCA may result in a waiver of any attorney-client privilege.

### **III. ENFORCEMENT OF ANTITRUST COMPLIANCE POLICY AND CODE OF CONDUCT**

CCA intends to consistently adhere to and enforce its Antitrust Compliance Policy and Code of Conduct through appropriate monitoring and auditing systems implemented to detect misconduct. Upon detection of a violation or suspected violation, CCA will take all reasonable steps to respond appropriately and prevent further violations, including modifications to its policies. Failure to make such reports of known violations, failure to detect violations due to neglectful conduct or reckless indifference to the CCA's Antitrust Compliance Policy and Code of Conduct, and the making of false reports of antitrust policy violations or misconduct against others shall constitute violations of the CCA's Antitrust Compliance Policy and Code of Conduct and may lead to disciplinary action, including but not limited to termination of membership, appointment, employment, association or affiliation with the CCA. The appropriate form of discipline shall be case specific.

### **IV. ANTITRUST COMPLIANCE COMMITTEE / COMPLIANCE OFFICER**

#### **A. The Compliance Committee**

This Antitrust Compliance Program shall be implemented under the guidance and supervision of the Antitrust Compliance Committee established by the CCA's Board of Directors which shall oversee compliance efforts for CCA.

#### **1. Members**

The members of the Antitrust Compliance Committee are:

- a. The Antitrust Compliance Officer;
- b. Executive Director;
- c. Board Member;
- d. Board Member; and
- e. Board Member.

#### **2. Meetings**

The Antitrust Compliance Committee shall meet bi-monthly on the [DATE] of every other month, or as otherwise scheduled. The bi-monthly meeting may be held on a different date provided the Antitrust Compliance Officer provides at least three (3) days prior notice to each member.

#### **3. Duties**

The Antitrust Compliance Committee is responsible for reviewing the CCA's antitrust compliance on an on-going basis, including but not limited to CCA's compliance with the antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement. It also addresses policy questions arising in connection with the CCA's Antitrust Compliance Policy and Code of Conduct. It may propose and direct

modifications to the Policy and Code of Conduct. The Antitrust Compliance Committee is charged with annually reviewing the Antitrust Compliance Policy and Code of Conduct to determine its effectiveness.

## **B. The Antitrust Compliance Officer**

The Antitrust Compliance Officer shall be a member of the Board of Directors, reporting to the Officers of the CCA.

### **1. Chair of Committee**

The Antitrust Compliance Officer shall chair the Antitrust Compliance Committee. The CCA's General Counsel shall assist and/or attend such meetings as requested by the Antitrust Compliance Officer.

### **2. Duties of the Antitrust Compliance Officer**

The Antitrust Compliance Officer will oversee and supervise the managerial and administrative tasks involved in establishing, monitoring, and updating the CCA's Antitrust Compliance Program. The Antitrust Compliance Officer shall:

- a. Supervise the implementation of this Antitrust Compliance Program and Code of Conduct;
- b. Assist, as necessary, the CCA's Executive Director to establish and operate educational programs in accordance with Section 2.B.5 of this Antitrust Compliance Program by (1) disseminating educational materials related to antitrust compliance practices, (2) educating and training new and future officers, directors, members, employees, representatives and agents regarding antitrust compliance and the CCA's Antitrust Compliance Policy and Code of Conduct generally, (3) in conjunction with the approval of the Antitrust Compliance Committee, regularly reviewing and revising all Antitrust Compliance Program-related educational materials to reflect changes in antitrust law requirements, and notifying officers, directors, employees, members, representatives and agents of such changes, and (4) collecting, retaining and reporting educational program attendance records;
- c. Assist, as necessary, the CCA's Executive Director with notifying CCA's officers, directors, members, employees, representatives and agents of applicable compliance standards, and oversee the training and education of all officers, directors, members, employees, representatives and agents involved in the CCA's antitrust compliance activities;
- d. Supervise and evaluate monitoring and auditing procedures;

- e. Implement and oversee a Hotline/Helpline in accordance with Section VII.B.1 of this Compliance Program;
- f. Investigate suspected intentional and accidental misconduct and assist the Executive Director, Antitrust Compliance Officer and/or CCA's General Counsel with investigations conducted in accordance with Section VIII of this Antitrust Compliance Program;
- g. Investigate complaints and reports of suspected non-compliance received by the Hotline/Helpline or other means;
- h. Establish and maintain open lines of communication with the CCA's administrative personnel to ensure effective and efficient compliance policies and procedures;
- i. Compile Antitrust Compliance policies and procedures, coordinate these policies and procedures, and develop new policies and procedures (which shall be standardized, except to the extent that customized policies and procedures are required);
- j. Periodically update and modify the Antitrust Compliance Program and the Antitrust Compliance Policy and the Code of Conduct;
- k. Prepare quarterly compliance reports and an Annual Report to the Antitrust Compliance Committee as requested. The Annual Report shall describe the general compliance efforts undertaken during the preceding year and identify any changes necessary to improve the Antitrust Compliance Program;
- l. Assist the Executive Director and other administrative personnel to require, as appropriate, external contractors and vendors to comply with the terms and conditions of the Antitrust Compliance Program; and
- m. Assist the Executive Director to ensure that reports to regulatory agencies are handled properly and in accordance with applicable laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement.

## **V. TRAINING AND EDUCATION PROGRAMS**

### **A. Dissemination of Antitrust Documents to CCA's Officers, Directors, Members, Employees, Representatives and Agents**

All CCA officers, directors, members, employees, representatives and agents shall receive copies of the Antitrust Compliance Program documents and all other information necessary to ensure compliance with the CCA's Antitrust Compliance Program, Antitrust Compliance Policy and Code of Conduct. New officers, directors, members, employees, representatives and agents of CCA shall receive copies of the Antitrust Compliance Program documents and commence initial training in compliance policies within two (2)

weeks after beginning association or employment with CCA. Within four (4) weeks of receiving the Antitrust Compliance Program documents, each such CCA officer, director, employee, representative and agent must sign and return the acknowledgment form reprinted at the end of the Antitrust Compliance Program documents, affirming that the CCA officer, director, employee, representative or agent has read and understands these provisions.

CCA's officers, directors, members, employees, representatives and agents will receive copies of any changes in the Antitrust Compliance Program policies as they occur. CCA's officers, directors, members, employees, representatives and agents must sign and return an acknowledgment form after each Antitrust Compliance Program policy revision has been received and reviewed.

All acknowledgment forms must be submitted to the Executive Director, who will review officer, director, member, employee, representative and contractor/agent rolls to verify that all CCA officers, directors, members, employees, representatives and agents have received the Antitrust Compliance Program documents and returned signed acknowledgment forms.

Any officer, director, member, employee, representative or agent who has questions regarding this Antitrust Compliance Program, or his or her obligations under the Program, should contact the Antitrust Compliance Officer or Executive Director immediately.

## **B. Training**

### **1. Attendance at Training Sessions**

CCA's officers, directors, members, employees, representatives and agents will be provided on-going training regarding antitrust compliance issues specific to compliance with federal and state antitrust laws, the OAG's Stipulated Judgment and Release, and the FTC's Consent Agreement. CCA leadership will receive training during their Annual Orientation. As new developments or concerns arise, the Antitrust Compliance Officer may require additional training sessions for some or all CCA officers, directors, members, employees, representatives and agents. All CCA's officers, directors, members, employees, representatives and agents providing medical services, items or billing services shall complete a training session on an annual basis, which will be coordinated by the Antitrust Compliance Officer and Executive Director. All new CCA officers, directors, members, employees, representatives and agents will be required to complete a specialized training program within three (3) months following their employment or association with CCA. Additional specialized training will be provided to officers, directors, members, employees, representatives and agents on an as needed basis. The full cooperation of all officers, directors, members, employees, representatives and agents is expected.

### **2. Specific Antitrust Issues**

An individual with knowledge of antitrust laws and regulations shall, under the direction of the Antitrust Compliance Officer, provide specific antitrust compliance training to CCA's officers, directors, members, employees, representatives and agents. Other persons involved in training will include those appointed by the Executive Director and/or Antitrust Compliance Officer. The substantive content of such training shall include the specific details and requirements of the OAG's Stipulated Judgment and Release, the FTC's Consent Agreement and an overview of federal and state antitrust laws generally.

### **3. Updating**

The Antitrust Compliance Officer shall be responsible for ensuring that training is updated at regular intervals to include new developments in law.

## **VI. DOCUMENTATION, RECORD-KEEPING AND REGULATORY REPORTS**

### **A. Generally**

CCA shall maintain any and all books and records which pertain to its efforts to implement and enforce its Antitrust Compliance Program in accordance with its usual record retention policies and business practices.

### **B. Compliance with the OAG's Stipulated Judgment and FTC's Consent Agreement**

1. For a period of five (5) years from March 5, 2008 to March 5, 2013, the CCA shall maintain a copy of each document distributed at each meeting of the CCA's board of directors, the CCA's district meetings, or seminars or training sessions sponsored in whole or in part by the CCA for a period of five (5) years from the date of distribution, along with records showing the date of the meeting or seminar at which the document was distributed.
2. The CCA shall maintain a copy of each document relating to the CCA's compliance with the CCA Antitrust Training and Education Program required by the OAG's Stipulated Judgment and Release which is distributed to any CCA member or members for a period of five (5) years from the last date of its distribution, along with records showing the date(s) of distribution and each person to whom the document was distributed.
3. The CCA shall maintain records confirming that within thirty (30) days of the OAG's Stipulated Judgment CCA provided a dated and signed notification letter in the form set forth in Appendix B of the OAG's Stipulated Judgment and Release along with a copy of the Complaint and Judgment in the matter to each of the following:

- a. Current officers and directors, and to each other agent, representative, or employee of the CCA whose activities are affected by the Judgment, or who has responsibilities with respect to the subject matter of the Judgment;
  - b. Current members; and
  - c. The payers listed in Appendix C of the OAG's Stipulated Judgment and Release.
4. For a period of five (5) years from March 5, 2008 to March 5, 2013 and within thirty (30) days of the date that the person assumes such position, the CCA will distribute a dated and signed notification letter in the form set forth in Appendix B of the OAG's Stipulated Judgment and Release along with a copy of the Complaint and Judgment, to each new officer and director of the CCA, and to each other new agent, representative, or employee of the CCA whose activities are affected by this Judgment, or who has responsibilities with respect to the subject matter of the OAG's Stipulated Judgment and Release.
5. For a period of five (5) years from March 5, 2008 to March 5, 2013, CCA will provide each new member with a dated and signed notification letter in the form set forth in Appendix B of the OAG's Stipulated Judgment and Release along with a copy of the Judgment and attached Complaint, within thirty (30) days of the new member's admission to the CCA.
6. The CCA published a notification letter in the form set forth in Appendix B of the OAG's Stipulated Judgment and Release along with a copy of the Judgment and attached Complaint, on the CCA website on March 5, 2008 and such letter shall remain on the website for a period of five (5) years, up to and including March 5, 2013.
7. The CCA shall notify the OAG at least thirty (30) days prior to any proposed material change in the CCA, such as a petition for bankruptcy commenced by CCA, dissolution, assignment, sales resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries. The CCA shall notify the OAG as soon as reasonable, no later than five (5) business days after a petition for bankruptcy filed against CCA.
8. For ten (10) years from March 5, 2008 to March 5, 2018, on or before its anniversary date March 5, the CCA shall certify to the OAG:
  - a. Whether it has complied with each term and condition set forth in Sections C.1 and C.2 of the OAG's Stipulated Judgment and Release;
  - b. Whether it has complied with the provisions of Sections C.3 through C.10 therein regarding notification of the OAG's Stipulated Judgment and Release and regarding antitrust compliance training; and
  - c. The names of the current officers, directors, and key employees of the CCA.

9. For a period of five years from March 5, 2008 to March 5, 2013, the CCA will maintain a copy of any written communication distributed to any chiropractor related to any subject that is covered by any provision of the FTC's Decision and Order.

## **VII. REPORTING COMPLIANCE ISSUES**

### **A. General Principles**

Each CCA officer, director, member, employee, representative and agent must comply and cooperate with the CCA's Antitrust Compliance Program, the Antitrust Policy and Code of Conduct and is expected to report instances of suspected non-compliance to the CCA's representatives as described below. Officers, directors, members, employees, representatives and agents who in good faith report possible compliance issues will not be subject to retaliation or harassment for the report. Any concerns regarding apparent or possible retaliation or harassment should be addressed to the Antitrust Compliance Officer and the CCA's General Counsel.

### **B. Reporting System for Potential Compliance Issues**

CCA will operate a confidential reporting system for potential antitrust compliance problems that is accessible to all officers, directors, members, employees, representatives and agents, as well as external contractors and vendors. As a general matter, questions about antitrust compliance should be presented to the Executive Director, Antitrust Compliance Officer, or CCA's General Counsel, Attorney Mary Alice Moore Leonhardt, 67 Russ Street, Hartford, CT 06106, (860) 727-8874. However, the Antitrust Compliance Program educational materials will also direct officers, directors, members, employees, representatives and agents to report to the Antitrust Compliance Officer, the Executive Director or the CCA's General Counsel any activity that they believe to be inconsistent with policies or legal requirements regarding antitrust matters. Such reports may also be made to the Office of the Attorney General, Assistant Attorney General Michael Cole, Chief, Antitrust Department, 55 Elm Street, Hartford, CT 06106 at (860) 808-5040.

The materials distributed by the Executive Director and/or the Antitrust Compliance Officer will explain how those persons can be contacted. The Antitrust Compliance Officer will use varied methods of communication, including computer communications, to ensure that the elements of the Antitrust Compliance Program are well understood by all officers, directors, members, employees, representatives and agents, and external contractors and vendors, as appropriate.

Individuals may make such reports either via a telephone Hotline/Helpline (which may be run by a non-CCA entity), or by a written or oral communication addressed to the Executive Director, Antitrust Compliance Officer or the CCA's General Counsel. All officers, directors, members, employees, representatives and agents will be advised of the Hotline/Helpline reporting system and the opportunity to report antitrust compliance concerns. Any CCA representative who receives such an inquiry, report, or complaint must promptly document and transmit it to the Antitrust Compliance Officer. The Antitrust Compliance Officer will maintain the Hotline/Helpline reporting system and serve as a liaison with any provider of a Hotline/Helpline service that may be retained. Upon the complainant's request, his or her anonymity will be preserved to the extent practicable.

### **C. Reports to CCA's General Counsel**

Whenever an officer, director, member, employee, representative or agent of the CCA is concerned about possible or perceived violations of the CCA Compliance Program, antitrust laws, the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement, he or she may direct such concerns to the CCA's General Counsel, Attorney Mary Alice Moore Leonhardt, 67 Russ Street, Hartford, CT 06106, (860) 727-8874 or to the Office of the Attorney General, Assistant Attorney General Michael Cole, Chief, Antitrust Department, 55 Elm Street, Hartford, CT 06106 at (860) 808-5040.

### **VIII. GOVERNMENT INVESTIGATIONS**

CCA is committed to full compliance with all federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement and shall cooperate with all reasonable demands made in any government investigation of CCA officers, directors, members, employees, representatives and agents. However, the CCA deems it essential that the legal rights of CCA's officers, directors, members, employees, representatives and agents are protected. If a CCA officer, director, member, employee, representative or agent is contacted at home by a governmental agency concerning CCA's business, the individual has the right to legal counsel and may ask the agent to come back later.

The individual may contact the CCA Executive Director, the Antitrust Compliance Officer and/or CCA's General Counsel to discuss the matter. If any CCA officer, director, member, employee, representative or agent receives a subpoena, inquiry or other legal document in regards to CCA's business, whether at home or in the workplace, from any governmental agency, the CCA officer, director, member, employee, representative or agent shall first notify the Executive Director and/or CCA's General Counsel as soon as possible. You also have the right to seek legal advice from your own counsel. In addition, where appropriate, you may contact Office of the Attorney General, Assistant Attorney General Michael Cole, Chief, Antitrust Department, 55 Elm Street, Hartford, CT 06106 at (860) 808-5040.

# APPENDIX A

## **APPENDIX B**

## **APPENDIX C**

### **ANTITRUST COMPLIANCE POLICY AND CODE OF CONDUCT**

The Connecticut Chiropractic Association (the “CCA”) is a not-for-profit organization. The CCA is not organized to and may not play any role in the competitive decisions of its members or their employees, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of diverse opinions without in any way attempting to encourage or sanction any particular business practice.

The CCA provides a forum for exchange of ideas in a variety of settings including its annual meeting, educational programs, committee meetings, and Board meetings. The Board of Directors recognizes the possibility that the Association and its activities could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this policy statement clearly and unequivocally supports the policy of competition served by the antitrust laws and to communicate the Association's uncompromising policy to comply strictly in all respects with those laws. These laws prohibit activities that illegally restrain or reduce competition, control prices, allocate markets, or result in boycotts, specifically with respect to activities, negotiations and interactions with competitors and/or payers. In addition, the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement prohibit specific conduct by, between and among the CCA, its officers, directors, members, employees, representatives and agents, which could lead to or constitute an antitrust violation.

While recognizing the importance of the principle of competition served by the antitrust laws, the Association also recognizes the severity of the potential penalties that might be imposed on not only the Association but its members as well in the event that certain conduct is found to violate the antitrust laws. Should the Association or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment for up to 3 years as well as fines up to \$350,000 for individuals and up to \$10,000,000 for the Association plus attorney fees. In addition, damage claims awarded to the governmental agency and/or private parties to a civil suit may be tripled for antitrust violations. Given the severity of such penalties, the Board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.

The following legal standards, code of conduct and guidelines are intended to ensure the CCA’s strict adherence with the federal and state antitrust laws, the OAG’s Stipulated Judgment and Release and the FTC’s Consent Agreement, and to assist you with your compliance with these important laws and pronouncements. All officers, directors, members, employees, representatives and agents shall be required to review this CCA Antitrust Policy and Code of Conduct and adopt its provisions.

#### **A. Legal Standards Applicable to Antitrust Compliance**

The following legal standards will be observed relative to compliance with the antitrust laws:

1. No CCA officer, director, member, employee, representative or agent may, directly or indirectly, or through any corporate or other device, in connection with the provision

of chiropractic services in or affecting commerce, as “commerce” is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. §§44:

2. Enter into, adhere to, participate in, maintain, organize, implement, enforce or otherwise facilitate any combination, conspiracy, agreement, or understanding between or among any chiropractors with respect to the provision of chiropractic services:
  - a. to negotiate on behalf of any chiropractor with any payer regarding any term, condition, or requirement upon which any chiropractor deals, or is willing to deal, with any payer, including, but not limited to, price terms; or
  - b. to deal, refuse to deal, or threaten to refuse to deal with any payer.
3. Request, propose, urge, advise, recommend, advocate, or attempt to persuade in any way any chiropractor to deal or not deal with a payer, or accept or not accept the terms and conditions, including, but not limited to, price terms, on which the chiropractor is willing to deal with a payer;
4. Exchange or facilitate in any manner the exchange or transfer of information among chiropractors concerning any chiropractor’s willingness to deal with a payer, or the terms or conditions, including price terms, on which the chiropractor is willing to deal with a payer;
5. Organize, sponsor, facilitate or participate in any meeting or discussion that the CCA expects or reasonably should expect will facilitate communications concerning one or more chiropractors’ intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;
6. Continue a formal or informal meeting that the CCA expects or reasonably should expect will facilitate communications concerning one or more chiropractors’ intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;
7. Continue a formal or informal meeting of chiropractors after any person makes any statement concerning one or more chiropractors’ intentions or decisions, that if agreed would violate the OAG’s Stipulated Judgment and Release and/or the FTC’s Consent Agreement, unless the CCA immediately ejects such person from the meeting;
8. Continue a formal or informal meeting where the CCA knows or reasonably should know that two or more persons are communicating concerning one or more chiropractors’ intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

9. Attempt to engage in any action prohibited by the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement; and/or
10. Encourage, suggest, advise, pressure, induce, or attempt to induce any person to engage in any action that, if taken by the CCA, would be prohibited by the OAG's Stipulated Judgment and Release and/or the FTC's Consent Agreement.

**B. Officer, Director, Member, Employee, Representative and Agent Obligations Relating to Antitrust Compliance**

**1. Mandatory Compliance with Laws**

Compliance with and promotion of strict adherence to the federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement is a condition of membership, appointment, employment, association or affiliation with the CCA. In addition, both the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement contain specific provisions governing the conduct of meetings, and the obligation of the CCA to eject persons from meetings and/or terminate meetings under certain circumstances. You must familiarize yourself thoroughly with the requirements of the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement. (*See* APPENDICES A and B and visit the CCA website for detailed and current advisories on the topic of antitrust: <http://www.ctchiro.com>.

Certain activities of the Association and its members are deemed protected from antitrust laws under the First Amendment right to petition government. The antitrust exemption for these activities, referred to as the Noerr-Pennington Doctrine, protects ethical and proper actions or discussions by members designed to influence: 1) legislation at the national, state, or local level; 2) regulatory or policy-making activities (as opposed to commercial activities) of a governmental body; or 3) decisions of judicial bodies. However, the exemption does not protect actions constituting a "sham" to cover anticompetitive conduct.

At all committees, educational meetings, or other business meetings of the CCA, speakers and participants will be informed about the CCA's Antitrust Policy through the CCA's Antitrust Statement, attached as APPENDIX C.

CCA, its officers, directors, employees, representatives and agents shall establish and maintain an antitrust training and education program (the "CCA Antitrust Training and Education Program"), completion of which shall be required for all officers, directors, members, employees, representatives and agents of the CCA. Such training and education program shall cover compliance with federal and state antitrust laws, the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement, in addition to all pertinent regulatory pronouncements relative to antitrust compliance and enforcement. A copy of the CCA Antitrust Training and Education Program is attached as APPENDIX D, as same may be amended, from time to time.

## **2. Prohibited Conduct**

No officer, director, member, employee, representative or agent of the CCA has any authority to act contrary to the provisions of the OAG's Stipulated Judgment and Release, the FTC's Consent Agreement, the antitrust laws or CCA's standards of conduct or to authorize, direct or condone violations by any other officer, director, member, employee, representative or agent. Any officer, director, member, employee, representative or agent who violates these laws and/or regulations not only risks individual indictment, criminal prosecution and penalties, civil actions for damages and penalties and administrative sanctions, but also subjects CCA to the same risks and penalties. Any CCA officer, director, member, employee, representative or agent who violates these laws may be subject to immediate termination of his or her membership, appointment, employment, association or affiliation with the CCA.

## **3. Examples of Prohibited Conduct**

Examples of activities and conduct which potentially could run afoul of the antitrust laws include arrangements or agreements by, between and among chiropractors to boycott or refuse to deal with managed care organizations or other third-party payers; to allocate patients, markets or territories; or joint restriction of advertising or marketing efforts.

- a. The Association or any committee, district, or activity of the Association shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors with regard to prices or terms and conditions of contracts for services or products. Therefore, discussions and exchanges of information about such topics will not be permitted at Association meetings or other activities.
- b. There will be no discussions discouraging or withholding patronage or services from, or encouraging exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services, any actual or potential competitor or group of actual potential competitors, or any private or governmental entity.
- c. There will be no discussions about allocating or dividing geographic or service markets or customers.
- d. There will be no discussions about restricting, limiting, prohibiting, or sanctioning advertising or solicitation that is not false, misleading, deceptive, or directly competitive with Association products or services.
- e. There will be no discussions about discouraging entry into or competition in any segment of the marketplace.

- f. There will be no discussions about whether the practices of any member, actual or potential competitor, or other person are anti-competitive unless the discussions or complaints follow the prescribed due process provisions of the Association's bylaws.

**4. Reporting Suspected or Known Violations**

CCA and its officers, directors, members, employees, representatives and agents shall not knowingly and willfully make or cause to be made any false statement or representation of material fact in any report to a governmental agency with respect to CCA's antitrust compliance activities. In addition, CCA, its officers, directors, members, employees, representatives and agents shall not, with knowledge and fraudulent intent, fail to report any violations to proper law enforcement authorities.

Any officer, director, member, employee, representative or agent of the CCA who has knowledge of activities that he or she believes may violate the OAG's Stipulated Judgment and Release, the FTC's Consent Agreement, antitrust laws, or the CCA's Antitrust Compliance Policy or Code of Conduct, has an obligation, upon becoming aware of such activities, to promptly report the matter to the CCA's Executive Director, the CCA's Compliance Officer or the CCA's General Counsel. Reports may be made anonymously but reporters are encouraged to identify themselves to facilitate follow up investigation and substantiation of concerns. Reporters will not be penalized, sanctioned or retaliated against in any way.

Adopted: \_\_\_\_\_ Date: \_\_\_\_\_

Name (printed) \_\_\_\_\_ Title: \_\_\_\_\_



Connecticut Chiropractic Association

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## APPENDIX D

### Speaker Clause on Antitrust Avoidance Statements

#### Scenario #1

Legal counsel has asked that our speakers be made aware of the Connecticut Chiropractic Association's strong belief in competition under strict antitrust rules. The purpose of these rules is to preserve and promote free competition.

It is the Connecticut Chiropractic Association's policy to comply with all aspects of the law. We respectfully request that all companies and individuals not only comply with antitrust law in fact, but conduct themselves in a manner that avoids even the slightest suspicion that the law is being violated. This includes, but may not be limited to, avoiding discussion of pricing of any kind, nor discussing quality ratings of suppliers or customers. As a speaker or presenter at this meeting, you are advised not to violate the antitrust laws.

#### Scenario #2

The presenter warrants that no part of the program shall violate any federal or state antitrust or restraint of trade laws nor transgress any federal or state laws or regulations.

#### Scenario #3

Speakers at committees, educational meetings or other business meetings of the Connecticut Chiropractic Association shall be informed that they must comply with the CCA's antitrust policy in the preparation and the presentation for their remarks. Meetings will follow a written agenda approved in advance by the CCA or its legal counsel.



Connecticut Chiropractic Association

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## APPENDIX D 1

### Antitrust Statement

The Connecticut Chiropractic Association reminds all of you in attendance that various state and federal laws prohibit the exchange of information among competitors regarding matters pertaining to price, refusals to deal, market division, tying relationships and other topics which might infringe upon antitrust regulations, and that no such exchange or discussion will be tolerated during this meeting.

These guidelines apply not only to the formal meeting sessions, but to informal discussions during breaks, meals or social gatherings.

This statement will appear on:

*Meeting Agenda*

*Conference Booklets*

*Board Member Table tents*

*Meeting Attendance Sign-In Sheet*

*Website*

*List Serve*

*Board Orientation Manuals*

## APPENDIX E

### I. ANTITRUST EDUCATION AND TRAINING PROGRAM

#### A. Introduction

As you may know, in March 2008, the CCA entered into a Stipulated Judgment and Release and an Agreement Containing Consent Order to Cease and Desist (and a related Decision and Order) to resolve allegations by the Connecticut Attorney General (the “AG”) and Federal Trade Commission (the “FTC”), respectively, that the CCA had violated the antitrust laws. A copy of these documents is available at the CCA’s website (<http://www.ctchiro.com>.) While the CCA has denied the allegations made by the AG and FTC, the two settlements require the CCA to cease and desist from a variety of actions and to document its compliance with the settlements and the antitrust laws. The CCA intends fully to comply with the terms of these settlements, and will not tolerate activities by its officers, directors, members, employees, representatives or agents, or anyone acting on its behalf, that fail to comply with the letter and spirit of those terms and the antitrust laws generally. For further information on the specific requirements imposed by these settlements, please refer to the CCA’s website. **Completion of this program will be required for all officers, directors, members, employees, representatives and agents of CCA.**

#### B. Program Schedule and Plan of Events

##### 1. Board Meetings

- a. The CCA Antitrust Statement is to appear on all Board Meeting agendas, attendance sign-in sheets and tent cards, and the opening statement from the Presiding Officer will reiterate the Antitrust policy.

##### 2. Policy Manual

- a. Effective immediately, the CCA Antitrust Statement, Policy and Code of Conduct are to be included in the policy manual.

##### 3. Board Orientation

- a. Each fall, a section of orientation programming is to be dedicated to education and review of antitrust compliance policies and association and board member responsibilities.

##### 4. Membership

- a. Antitrust compliance educational sessions will be held at the bi-annual meetings held in the fall and spring.

- i. CCA Antitrust Policy and Code of Conduct with Acknowledgment will be distributed at the beginning of each fiscal year along with dues billing. Members will be required to sign and return the Acknowledgment page to be kept on file at the CCA.
  - ii. The CCA Antitrust Statement, Policy and Code of Conduct will be posted on the member's side of the CCA website.
  - iii. The CCA Antitrust Statement is to appear on attendance sign-in sheets for each program conducted by the CCA.
- b. Conferences/Programs
  - i. The CCA Antitrust Statement will be included in conference and program handouts.
- c. Committee Meetings
  - i. The CCA Antitrust Statement is to appear on attendance sign-in sheets for each meeting.
- d. Employees
  - i. During their annual review, employees will sign an Acknowledgment form documenting their adoption of the CCA Antitrust Compliance Policy and Code of Conduct.
- e. Contracted Services
  - i. During annual review, contractors will be required to sign an Acknowledgment form documenting their adoption of the CCA Antitrust Compliance Policy and Code of Conduct.
- f. Guest Speakers/Exhibitors
  - i. Guest speakers and Exhibitors secured for participation in CCA conferences and programs will be required to sign an Acknowledgment form documenting their adoption of the CCA Antitrust Compliance Policy and Code of Conduct and the contract will require antitrust compliance.

**C. Program Content**

- a. Review Of CCA Compliance Policy and Code of Conduct
- b. Federal and state antitrust laws and regulations
- c. OAG's Stipulated Judgment and Release
- d. FTC's Consent Agreement

1. Review of Possible Antitrust Violations to Avoid

a. Agreements That Restrain Competition - Section 1 of the Sherman Act

The most common antitrust violations of which you should be aware fall within Section 1 of the Sherman Act and equivalent sections 35-26 and 35-28 of the Connecticut Antitrust Act. They result from agreements – typically with competitors, customers or suppliers – that unreasonably restrain competition. Thus, the antitrust laws prohibit the CCA and its members from *agreeing* to do certain things that they could legally do if they acted *independently*.

Any type of agreement, understanding or arrangement between competitors, whether written or oral, formal or informal, express or implied, that limits competition is subject to antitrust scrutiny. Moreover, any attempt to reach such an agreement may be unlawful, even if it is unsuccessful.

b. Some Troublesome Agreements

The courts have found that certain types of agreements always (or almost always) violate the antitrust laws. They include agreements of the kinds discussed here.

- i. Price-fixing and bid-rigging agreements. Any agreement between competitors on prices charged to others for products or services violates the antitrust laws. Every direct price-fixing agreement is illegal, whether it is meant to raise, lower or just stabilize prices. Agreements may be illegal as well even if they only indirectly affect prices because they involve such things as discounts, promotional allowances, standardization of customer or delivery services, or uniform credit terms and billing practices. It is also illegal for competitors to agree on the prices they will pay for products or services sold by other persons, or to engage in collusive bidding practices (or “bid rigging”).
- ii. Agreements to allocate markets, customers, territories or products. It is illegal for competitors to agree to divide or allocate customers or territories. An agreement among competitors is also illegal if it provides that they will refrain from selling a certain product generally, or in any geographic territory or to any category of customer.
- iii. Group boycotts and collective refusals to deal. Agreements among independent firms or individuals that they will boycott or refuse to buy from particular suppliers or sell to particular customers are generally prohibited by the antitrust laws. This does not necessarily preclude sharing certain information about a supplier or customer (e.g.,

concerning its credit history) so long as there is no discussion on whether to deal with it.

- iv. Agreements to control production. Agreements among competitors to increase or restrict services or production levels are always problematic under the antitrust laws. The same is true of agreements among competitors to limit the quality of production, restrict the products or services sold to a particular customer, refrain from introducing new products and services or eliminating old ones, or accelerate the introduction or withdrawal of a product or service.

#### **ACTIVITIES THAT ILLEGALLY RESTRAIN COMPETITION**

- **CCA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas:**
  - The CCA's or members' prices for products or services**
  - Allocations of markets, customers, territories or products**
  - Collective refusals to deal with payers or anyone else**
  - Limitations on production**
- **To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any CCA-related operations, events or other activities *without the prior approval of CCA's General Counsel.***

- c. Other Types of Agreements That Also May Raise Concerns Under the Antitrust Laws

Here are some examples – though not a complete list – of agreements whose legality depends on the circumstances involved.

- i. Exclusive Dealing. Exclusive dealing arrangements come in various forms. Some might require a customer to sell exclusively the products of a particular company, or coerce a supplier into refusing to sell to its customer's competitors. Others might compel a customer to purchase all of its requirements for a particular product or service from a single supplier.
- ii. Reciprocity. In a reciprocal dealing arrangement, a customer makes purchases from a supplier only on the condition that the supplier will buy products or services from the customer. Such reciprocal

arrangements are particularly troublesome when they are openly or implicitly coerced.

- iii. Product standardization. Competitors may create lawful agreements to establish industry product standards. Those agreements may cause problems under the antitrust laws, however, if they have an anticompetitive effect (e.g., where standardization makes it easier for competitors to set common prices).
- iv. Resale price agreements. An agreement between a seller and a customer on the price at which the customer will resell a product is frequently problematic. The seller may, however, suggest a resale price so long as it is completely clear that the customer is free to accept or reject the suggestion.

**ACTIVITIES THAT ALSO MAY BE ILLEGAL,  
DEPENDING ON THE CIRCUMSTANCES**

- **CCA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas *without the prior approval of CCA's General Counsel*:**
  - Exclusive dealing arrangements**
  - Tying arrangements**
  - Reciprocal sales and purchase arrangements**
  - Product standardization**
  - The prices at which products or services should be resold**
- **To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any CCA-related operations, events or other activities *without the prior approval of CCA's General Counsel*.**

- d. Other Conduct That May Violate the Antitrust Laws Even Without an Agreement of Any Type

You should also be aware of antitrust law violations that may take place even where there is no agreement among competitors or anyone else. The most common violations of that type are briefly discussed here.

- i. Monopolization. The law of monopolization (including attempts to monopolize and agreements to monopolize) is extremely complicated. Basically, when any enterprise enjoys a dominant market position for a particular product, it should be concerned about questions of monopolization. The law of monopolization often comes into play in

mergers or acquisitions for companies that actually compete, or could compete with each other. No enterprise should take actions that might be viewed as evidence of intent to acquire or maintain monopoly power in a particular market, to drive a particular competitor out of business, or to prevent somebody from entering the market.

- ii. **Price Discrimination.** The Robinson-Patman Act and the Connecticut Antitrust Act restrict a seller from charging different prices for its goods to competing customers at the same point in time. Those laws also forbid sellers in certain circumstances to discriminate when they offer promotional materials, services or other inducements to individual customers in an effort to have the customers engage in in-house promotions or advertising. Buyers are in turn prohibited from knowingly inducing or receiving a discriminatory price, promotional allowance, or service. These general prohibitions have a number of exceptions, which are too complex to be discussed here.
- iii. **Unfair Competition.** The Federal Trade Commission Act (also called the “FTC Act”) prohibits all “unfair methods of competition” and “unfair or deceptive acts or practices.” The FTC Act covers antitrust violations like those discussed above, but also forbids conduct that falls short of those violations. The FTC Act prohibits all forms of deceptive or misleading advertising and trade practices, such as disparaging a competitor’s product, harassing a customer or competitor, and stealing trade secrets and customer lists.
- iv. **Tying Arrangements.** A “tie-in” or “tying” arrangement permits a buyer to purchase one (tying) product or service only if it agrees to buy a second, distinct (tied) product or service from the seller. These types of agreements should be avoided.

**Contact CCA’s General Counsel for advice in any situations that may involve:**

**Attempts to eliminate competition**

**Price discrimination**

**Advertising of products or services**

**Potentially unfair business practices (e.g., acquiring customer lists)**

**Tying Arrangements**

**3. Antitrust Matters of Particular Interest to Professional Societies**

A number of antitrust cases against professional societies and trade associations have focused on situations that go to the heart of what those organizations are about.

a. Membership

Because a professional society or a trade association by its very nature provides certain commercial and other benefits to its members, the denial of membership to qualified competitors of the members could violate antitrust laws. Membership should be open to all who satisfy basic membership requirements, and any decision to deny membership or expel a member should be reviewed with CCA's General Counsel. All persons in any class of membership should have an equal opportunity to participate in CCA activities and benefits. In addition, certain programs and activities may need to be opened to non-members if their exclusion would put them at an unreasonable competitive disadvantage to members.

b. Collection and Dissemination of Data

Statistical data may obviously be compiled for legitimate purposes. Statistical information also may cause problems from an antitrust standpoint, however, if its use somehow harms competition. This might happen, for instance, if statements in CCA publications were to suggest what production, price, or specific market demand should or would be in the future. Broadly speaking, the farther removed the data are from prices and costs, the less company-specific they are, the more historical they are, and the wider their public dissemination is, the less likely it is that they will raise antitrust problems. As a general rule, particular market-sensitive data supplied by individual members should never be discussed or disseminated beyond the CCA without advice of counsel.

c. Codes, Standards and Certification Programs

Reasonable industry codes, standards and certification programs may promote quite valid interests, including the protection of safety, health and the environment and the maintenance of high standards of ethics and conduct. You should nonetheless be alert for anticompetitive effects that a particular standard may have. For example, a product standard that is unreasonably biased in favor of one manufacturer's product at the expense of another's may raise significant antitrust problems. Care should therefore be used both in creating and applying codes, standards and certification criteria, and in influencing other organizations as they do so.

d. Marketing and Communications

Like the other activities discussed above, marketing and communications serve valid interests, but can raise antitrust problems under some circumstances. Be careful that all advertising, announcements, and other communications that might affect competition are accurate, and are in no way deceptive or misleading and

may be construed as “signaling” to the individual members’ prices or other economic terms of dealing. Cooperative advertising programs may be suspect if they discriminate and benefit certain members at the expense of their competitors.

e. Government Relations

There is a constitutional right to petition legislatures, government agencies, and courts for action, and, if properly undertaken, such activity is not subject to the antitrust laws. The right to petition, however, does not provide unlimited antitrust protection. If the activity in question is not really designed to achieve government action but rather amounts to a sham used to injure competition, for example, it may raise serious antitrust problems. Moreover, activity is not immunized from the antitrust laws simply because a government representative encourages and happens to participate in it.

4. Some Practical Guidelines on Preventing Problems at Meetings, In Records, and in Contacts with Others

Meetings, communications and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that competitors were to discuss their prices at a meeting or in a document, and that their prices increased shortly afterward. A jury might view this as evidence that their discussions led to an agreement on pricing, and thus violated the antitrust laws. In a case like that, the mere *appearance* of illegality – even when the parties may *in fact* have done nothing wrong – can cause serious problems. The guidelines that follow are designed to help you not only comply with the antitrust laws, but also avoid even the appearance of impropriety.

a. Meetings

- i. CCA meetings regularly bring together members and others who are potential or actual competitors. It is therefore important that certain ground rules be followed to eliminate any suspicion or perception that a particular meeting might be used for anticompetitive purposes:
  - a. **Do** prepare an agenda, and have CCA’s General Counsel review it before the meeting.
  - b. **Do** provide a copy of these guidelines to every participant at the meeting.
  - c. **Do** have a CCA staff member attend the meeting.
  - d. **Do** have CCA’s General Counsel attend the meeting when appropriate.
  - e. **Do** follow the agenda at your meeting, with departures from the agenda only if CCA’s General Counsel approves.

- f. **Do** keep accurate minutes, and have CCA's General Counsel review them before they are put into final form and circulated.
- g. **Do not** discuss any subjects that might raise antitrust concerns (including prices, market allocations, refusals to deal, and the like) unless you have received specific clearance CCA's General Counsel in advance. If somebody begins discussing a sensitive subject, **do not allow the discussion to continue**. If the discussion does continue, **do not allow the meeting to continue**.

Both the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement (and the related Decision and Order of the FTC) contain specific provisions governing the conduct of meetings and the obligation of the CCA to eject persons from meetings and/or terminate meetings under certain circumstances, (see <http://www.ctchiro.com>.) You must familiarize yourself thoroughly with these requirements of the OAG's Stipulated Judgment and Release and the FTC's Consent Agreement (together with the related Decision and Order of the FTC).

When members get together and talk before or after formal meetings, there should be no discussions that raise antitrust concerns even in such informal settings.

b. Records

- i. When we talk about "records," we are referring to any of the various communications people record in some tangible form every day - - in documents, e-mail, videotapes, audio recordings (such as voice mail), and the like. These "records" are sometimes inaccurate, often less precise or artful than we would like, and all too frequently subject to misinterpretation. You should prepare every record with the thought that it might some day have to be produced to government officials or plaintiffs' lawyers. The following guidelines may help you avoid problems in matters involving competition:
  - a. **Do** avoid creating unnecessary records.
  - b. **Do** use language that is clear, simple and accurate.
  - c. **Do** avoid language that might be misinterpreted to suggest that the CCA condones or is involved in any anticompetitive behavior.
  - d. **Do**, as much as possible, limit yourself to facts and avoid offering opinions.
  - e. **Do not** use joking or aggressive language (*e.g.*, "let's kill our competitors").
  - f. **Do not** use language that might arouse suspicion (*e.g.*, "For limited distribution" or "Destroy after reading").
  - g. **Do not** speculate about the legality of specific conduct.

- h. **Do not** violate the CCA's record management policy when deciding how to handle, maintain or dispose of any record.
- i. **Do not** hesitate to consult CCA's General Counsel about any non-routine correspondence requesting a CCA member to participate in projects or programs, submit data for such activities, or otherwise join other members in CCA actions.

The OAG's Stipulated Judgment and Release and the FTC's Consent Agreement (and Decision and Order of the FTC) contain specific and detailed document retention requirements. You must familiarize yourself with those requirements and comply with them. (See <http://www.ctchiro.com>.)

c. Outside contacts

- i. Whenever you have contact with outside parties on antitrust matters, always keep in mind that even completely innocent behavior may be misinterpreted. If a government representative, a private attorney or investigator, or any other outside person contacts you for information that might relate in some way to the CCA relative to antitrust subjects, tell that person that you are not authorized to speak on behalf of the CCA and any response by you would be as an individual. You may inform CCA's General Counsel or your own attorney. You also have the right to contact the Office of the Attorney General, Assistant Attorney General Michael Cole, Chief, Antitrust Department, 55 Elm Street, Hartford, CT 06106 at (860) 808-5040.

5. Responsibility for Compliance, Monitoring and Enforcement

- a. **Responsibility for Antitrust Compliance.** While the CCA and CCA's General Counsel will provide guidance on antitrust matters, furnish training, and answer questions, it is ultimately your responsibility to assure that your actions comply with the antitrust laws. As a director, officer, member, employee, representative or agent, you are expected to avoid all discussions and activities which may involve improper subject matter or procedures – and this includes such things as agreeing on prices, on how to allocate markets or customers, on placing limits on production, and on refusing to deal with certain suppliers, payers or customers – and to avoid even the appearance of impropriety.
- b. **Communicating Antitrust Statement and Procedures.** General Counsel and CCA headquarters will distribute a copy of these procedures to each CCA officer, director, member, employee, representative and agent. The CCA will assist in providing copies of these procedures to CCA components and to officers, directors, members, employees, representatives and agents whose responsibilities with the organization might require knowledge of the antitrust laws. You should promptly sign and return the Acknowledgment at the end of this document.

- c. Communicating the CCA's Antitrust Compliance Statement and Procedures. General Counsel, in conjunction with the CCA and others, will make presentations at least once annually on compliance with the antitrust laws, the OAG's Stipulated Judgment and the FTC's Consent Agreement to the CCA's officers, directors, employees, representatives and agents. In addition, all CCA officers, directors, members, employees, representatives and agents are encouraged to contact the CCA at any time with questions they may have concerning antitrust compliance.
- d. Antitrust Compliance Monitoring and Enforcement. General Counsel and the CCA will monitor CCA operations and activities as appropriate to help ensure compliance with these procedures and the antitrust laws in general. They will also promptly investigate any conduct that is reported or otherwise suspected to violate the antitrust laws. Any such violations may result in the immediate termination of the officer, director, member, employee, representative or agent's membership, appointment, employment, association or affiliation with the CCA.

## 6. Conclusion

If you have a question about compliance with the antitrust laws, the OAG's Stipulated Judgment and Release or the FTC's Consent Agreement, contact the CCA. We look forward to working with you to assure that the Connecticut Chiropractic Association, its officers, directors, members, employees, representatives and agents remain in strict compliance with these antitrust laws and orders in all of our activities.



## **ACKNOWLEDGMENT FORM**

I, the undersigned officer, director, member, employee, representative or agent of the CCA, do hereby acknowledge that I have read and reviewed the CCA's Antitrust Compliance Program, Policy and Code of Conduct. I understand the content of the Antitrust Compliance Program, the Antitrust Compliance Policy and Code of Conduct as it applies to me and I am fully aware that I must comply with the standards set forth in the Antitrust Compliance Policy and Code of Conduct or be subject to immediate termination of my membership, appointment, employment, association or affiliation with the CCA.

I will cooperate fully with the Antitrust Compliance Committee, the Antitrust Compliance Officer and the CCA's General Counsel to the extent necessary or helpful for implementation of the Antitrust Compliance Program, Policy and Code of Conduct, as well as any and all investigations and corrective action plans conducted or implemented pursuant to the CCA's Antitrust Compliance activities.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print)

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**ANTITRUST EDUCATION & TRAINING PROGRAM  
POWERPOINT SLIDES**