

## **Minnesota Pharmacists Association Anti-trust Statement**

As you are aware, it is the policy of MPhA to comply with all federal and state antitrust laws. An equal responsibility for antitrust compliance, which includes an avoidance of even an appearance of improper activity, rests with the individual directors, officers, employees and members of the organization. It is a basic principle of American antitrust laws that competitors may not restrain competition among themselves with reference to the price, quality, or distribution of any products, and they may not act in concert to restrict the competitive capabilities or opportunities of their competitors, suppliers, or customers.

Under the per se rule of illegality, certain practices are conclusively presumed unreasonable and thus illegal, without elaborate inquiry as to the precise harm such actions may cause. Examples of per se violations are price fixing and boycotts. No director, officer, employee or member of MPhA shall enter into or facilitate any agreement of any kind among competitors in regard to prices, terms and conditions of sale, production, distribution or sales territories. Similarly, no director, officer, employee or member of MPhA shall enter into or facilitate any arrangement whereby a MPhA member or any community pharmacy agrees not to participate in any pharmacy benefit plan or program or agrees only to participate upon certain terms and conditions.

An unlawful agreement to fix prices or to boycott need not be a formal transaction, but in most cases is an informal, implied, or oral arrangement and is generally established by circumstantial evidence rather than by direct evidence. For example, the antitrust enforcement authorities have alleged with respect to other organizations that an "offer" to engage in anticompetitive conduct made in the context of a trade association meeting was "accepted" by the subsequent conduct of the association's members. Therefore, it is important that all MPhA representatives and members avoid even the appearance of impropriety in their activities.

In keeping with MPhA's policy to avoid even the appearance of impropriety, members should not discuss, in the course of any MPhA meeting, any of their company's individual decisions to participate or not to participate in any third-party reimbursement plan or program. As many of you know, a situation arose in the State of New York where the antitrust enforcement authorities alleged that such discussions resulted in a collective decision not to participate in a particular program. To avoid such an inference with respect to MPhA meetings, a company's decision with respect to any program should not be the subject of our discussions.

Penalties for violating the antitrust laws are severe, subjecting corporations to criminal penalties, as well as civil damage judgments and injunctive decrees. Individuals also are subject to criminal prosecution and may be punished by fines or imprisonment.

It is imperative that MPhA's directors, officers, staff and members work conscientiously to avoid any discussion that may have unintended implications.