

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation
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September 2018

DWC Pharmacy and Therapeutics Committee Antitrust Policy

The Administrative Director of the Division of Workers' Compensation has established a Pharmacy and Therapeutics Committee pursuant to Labor Code section 5307.29 to advise and consult on updates to the workers' compensation drug formulary. The Administrative Director issues this Antitrust Policy to alert members of the committee, members of the public, and other participants in committee meetings of the need to avoid action that may violate federal or state Antitrust laws.

Background

Federal antitrust law:

- Sherman Act - outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Under the Sherman Act, certain acts are considered so harmful to competition that they are almost always illegal, including arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.
- Federal Trade Commission Act (FTCA) - bans "unfair methods of competition" and "unfair or deceptive acts or practices." Violations of the Sherman Act are also considered violations of the FTCA.
- Clayton Act – was primarily aimed at prohibiting mergers and acquisitions that would lessen competition. Robinson-Patman amended Clayton to also ban discriminatory prices, services and allowances between businesses.

California antitrust law:

- Cartwright Act (Unfair Competition Law) – generally mirrors Sherman and Clayton Acts but provides more detail on prohibited actions:
 - Price Fixing: agreement between competitors to buy or sell products, services, or commodities at a fixed price or rate.
 - Group Boycotting: competitors agreeing to boycott a certain entity.
 - Market Division Scheme: agreement between competitors to divide markets, products, customers, or territories amongst themselves.

- Exclusive Dealings: requiring a buyer or seller to buy or sell all or most of a certain product from a single supplier.
- Price Discrimination: selling similar goods to buyers at different prices.
- Tying: selling a product or service on the condition that the buyer agrees to also buy a different product or service.

Policy

It is important the members of the P&T Committee and the public avoid subjects and discussions that could be deemed in violation of federal and state antitrust laws. P&T Committee meeting discussion shall follow the published agenda for the meeting.

In discussing agenda topics, it is permissible to discuss/provide publicly available data and statistics, studies or other relevant information.

Committee members and the public shall not discuss actions:

- To fix prices, both the final price or any element thereof (e.g., discounts, rebates, cost).
- To allocate customers to each other.
- To allocate markets, territories, or products to each other.
- To restrict or increase production, including levels of production, manufacturing processes and/or the supply of services.
- To impose a collective boycott of a manufacturer's product.

Committee members and the public shall not discuss non-public information including, but not limited to, purchasing/sales strategies, existing contractual agreements between manufacturers and purchasers, future price increases, or proprietary new drug technologies.

Drug manufacturers and their representatives are reminded to only disseminate information allowed by the federal Food and Drug Administration pursuant to federal laws and regulations, especially as it relates to the Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices (Code of Federal Regulations, Title 21, section 99).

The Chairperson will ensure that P&T meeting discussions follow the published agenda. Matters outside of the agenda should not be discussed without Chairperson approval, and as allowed by the Bagley Keene Open Meeting Act.

Members of the committee, the public, and department staff are advised of the following statement:

The purpose of this committee is to discuss and advise the Administrative Director regarding updates to the California workers' compensation pharmaceutical formulary. This meeting is held in public to promote the open sharing of ideas and opinions on pharmaceutical coverage.

It is important to recognize that these activities are subject to certain legal limits imposed by state and federal antitrust laws. Members of the committee and the public must be cognizant of these antitrust restrictions. A significant concern of these laws is with potential action in restraint of trade whereby competition is reduced by design.

Discussions among members and/or the public involving specific contract pricing, sale terms, territories, production or other aspects of competition, must be avoided. In the event any committee member feels that the course of discussion or action is headed into such an area, members should raise the issue immediately so that further discussion of such matters can be suspended pending receipt of advice satisfactory to the members that the topics addressed do not give rise to antitrust problems.