

Association of



*Professional
Behavior Analysts*

www.apbahome.net

**Avoiding Antitrust Liabilities:
Guidelines for APBA Members**
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Disclaimer: *The following does not constitute legal advice, but merely offers a brief overview of antitrust laws in the United States and general guidance for complying with them. Antitrust laws are complex and highly fact-specific. They are enforced by the U.S. Department of Justice and the Federal Trade Commission. Private parties can also sue practitioners for antitrust violations. Therefore, before engaging in any activities that may raise antitrust concerns, it is strongly recommended that practitioners obtain the services of an attorney with antitrust expertise to help them assess the risks associated with the proposed activity.*

The overarching purpose of antitrust laws, such as the federal Sherman Act, is to promote business competition, prohibit restraint of trade, and encourage innovation. Practitioners of applied behavior analysis (ABA) who may share pools of prospective clients and third-party funding sources are considered to be competing with one another for business under antitrust laws. As business competitors, ABA practitioners would be wise to refrain from engaging in activities that might be construed as conspiring or agreeing with other practitioners to fix prices (i.e., to charge or accept certain rates or fees) or to boycott payers because of the fees the payers offer. Violations of antitrust laws can carry severe civil or criminal penalties. Even if an alleged violation is ultimately found to be unsubstantiated, the legal fees and other costs of responding to such an allegation can be prohibitive.

The Association of Professional Behavior Analysts strongly recommends that U.S. members who bill third-party payers for providing services (a) consult with attorneys

with expertise in state and federal antitrust laws, and (b) avoid discussing with business competitors in any forum, either formally or informally, in writing or orally

- Past, current, or future billing rates, fees, disbursement charges, or other items that could be construed as "prices."
- Profit levels or wages.
- Changes in prices, fees, wages, or disbursement charges.
- Standardizing or stabilizing prices, fees, wages, or disbursement charges.
- Current billing or fee procedures.
- Giving or denying discounts, price quotes, or bids.
- Dealing or not dealing with payers based on the payers' reimbursement rates or prices.
- Allocating markets.
- Entering into agreements regarding any of the above.

ABA providers can conduct research on the foregoing and related topics, discuss them within their own companies or practices, and make decisions regarding rates, fees, prices, wages, and contracts, provided that they do so ***independently of business competitors***.

APBA encourages providers to

- Disseminate accurate information about the science and practice of ABA and the profession's standards to payers and the general public.
- Support efforts by APBA and their state behavior analysis organization to advocate for public policies that affect the practice of ABA. Antitrust laws prohibit professional organizations from negotiating reimbursement rates or engaging in collective bargaining on behalf of their members, but they are allowed to (carefully) petition the government on policies that affect rates and are contrary to professional standards of care. Professional organizations are also allowed to collect and disseminate historical price information within certain legal parameters. For an example, see the 2014 Professional Employment Survey under "Resources for Members" at www.apbahome.net.

These guidelines were developed with the assistance of David P. Goch, Esq., Webster, Chamberlain, & Bean, Washington, DC.