Occasionally, someone calls the ACR Legal Office with an antitrust question. Usually, the member or group has tried to take an action and has been told simply that it cannot be done as it would violate antitrust law, but isn’t provided with further explanation. In other cases, the member believes that he or she has been the victim of anticompetitive practices by hospitals, payers, or physician groups. In this month’s column, we will try to explain why there are antitrust laws, what they do, and how they apply to radiologists and physicians in general.

You may recall that, in the late 19th century, robber barons and trusts, such as Standard Oil, became extraordinarily wealthy and powerful, primarily by eliminating virtually all competition in their industries. This allowed them to control both production and pricing without fear that anyone would underprice them. Congress believed that these trusts, monopolies, and cartels harmed the public by restricting consumer choice and enabling artificially high prices.

In response, Congress passed the Sherman Antitrust Act in 1890 to prohibit business practices designed to restrain trade. The key language in the law is “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal.” Perhaps the most important part to understand about the act and subsequent antitrust laws is that they are designed primarily to protect the public as consumers — rather than the competitors — who may be harmed by the prohibited practices. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) share responsibility for civil antitrust enforcement while only DOJ may bring criminal antitrust charges. Most states have antitrust laws as well, and state attorneys general may enforce federal and state antitrust laws. Individuals or organizations that are harmed by anticompetitive practices may bring civil lawsuits as well. Criminal violations by individuals can result in fines up to $350,000 and up to three years in prison. Corporate violators can be fined up to $10 million. Civil violations can result in payment of treble damages (three times the actual financial damages), plus attorneys’ fees, costs, and class action lawsuits can result in huge damage payments.

Most publicity about antitrust enforcement involves mergers or companies that have near-monopoly control of an industry. For example, the breakup of AT&T was the result of a DOJ enforcement action and there are routine stories about DOJ or FTC approving or prohibiting proposed mergers or acquisitions on the basis that these actions would result in undue market concentration.

So, what does all this have to do with medicine? Believe it or not, the government considers physicians to be competitors — rather than the competitors — who may be harmed by the prohibited practices. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) share responsibility for civil antitrust enforcement while only DOJ may bring criminal antitrust charges. Most states have antitrust laws as well, and state attorneys general may enforce agreement to exclude competitors, agree to boycott a payer or hospital, or negotiate collectively unless they are members of an integrated group practice. Physicians also cannot form unions to negotiate for them unless they are bona fide employees of a hospital or other such organization. This is why physicians normally cannot go on strike or collectively withhold their services. DOJ has brought a number of actions against group practices that banded together in nominal organizations in an attempt to negotiate with payers. Such an end-run is permissible only if the practices are fully integrated in their daily routines, not merely for purposes of payer negotiations.

This is also why physician organizations like ACR cannot act as unions for their members. Antitrust laws apply to nonprofit professional societies like ACR just as they do to large multinational for-profit corporations. For example, in the early 1990s, the AMA and a number of other medical societies had policies stating that it was unethical for a member to do business with chiropractors. The chiropractors sued the AMA and medical societies for antitrust violations. While the other societies settled the suit (continued on page 29)
before trial by agreeing to remove the questioned language from their ethics policies, the AMA went to trial, where it lost the case and subsequent appeal. It ended up paying a large monetary amount and being required to change its policy.

In order to assure that the ACR avoids any such problems in the future, the College has adopted a formal antitrust policy for its members, staff, and meetings. The policy states specifically that “the ACR will not become involved in the competitive business decisions of its members, nor will it take any actions that would restrain competition. The ACR is firmly committed to the principle of competition served by the antitrust laws, and good business judgment demands that every effort be made to ensure compliance with all applicable federal and state antitrust laws and trade regulations.” This policy is cited at the start of every meeting, and members are given the opportunity to seek clarification if they have any questions about its application.

Next month, we will print the ACR antitrust policy in its entirety. //

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develop the relationship if you can explain the intricacies of imaging in an unbiased and educational manner,” says Mukherji. “In doing so, you develop credibility that helps foster the relationship. The members of the commission include payers, labor representatives, and insurers who are well aware of the unnecessary costs associated with self-referral and overutilization. They agree with radiologists that imaging studies should be performed and interpreted by the most qualified physicians. This is where we have the best opportunity to educate, collaborate, and influence.”

Nonetheless, according to Mukherji, there’s an even bigger reason radiologists should be involved in the CON process: “We have the opportunity to get involved and participate in the decision-making process. The future of radiology will be much stronger if we help create our future rather than simply adapt.” //

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CONNECTICUT – Norwich – General Radiologist – Hospital-based private practice looking to fill a vacancy due to retirement. The position is a general radiology position, but prefer a candidate with strong mammography skills to include biopsies. Overnight coverage is by a teleradiology service/partnership tract. Contact: Phillip Kohanski by e-mail at pkohanski@wwbh.org or by phone at 860-823-6305.

KENTUCKY – Louisville – Partner Track Radiologist – Twenty-six member private practice group in Louisville, seeking to add partnership track radiologists with fellowship training in body imaging and interventional radiology. Internal nighthawk, separate IR call pool. Includes some general radiology, some weekend & call coverage. Competitive salary, generous benefits, short partnership track. Contact: Scott Koch at KochTSSW_SC@ hotmail.com.

OTHER – Teleradiologists –The American Radiology Exchange, LLC, seeks quality teleradiologists. Set your own hours. Specialization a plus. Get paid for every study. Sign-ups (no charge & no commitment) are activated based on order of sign-up and credentials. Contact: Learn more at http://live.radbay.com/account/user/register or by e-mail Info@RadBay.com.

Pennsylvania – Philadelphia – Assistant Professor of Clinical Radiology – The Department of Radiology, University of Pennsylvania, seeks an assistant professor of clinical radiology. Duties include general pediatric imaging, IR, ultrasound, CT/ MR, fluoroscopy, inpatient/outpatient reading, developing teaching materials, &providing learning opportunities, including classroom teaching. Contact: Please send a letter of application & CV to Michele Honesty-Young by e-mail at youngmic@email.chop.edu or by fax at 267-425-7155.

Texas – Houston – Interventional Radiologist – The Michael E. DeBakey VA Medical Center seeks a full-time interventional radiologist. Required one-year IR fellowship. Faculty position with the Baylor College of Medicine, Houston. Salary based on credentials, training, accomplishments, & experience. Contact: Send current CV, statement of interest, contact information of three professional references to Beena.Kurian@va.gov. EEO.