



ABACS, LLC

ABA CONSULTATION & SERVICES

Antitrust

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Purpose

- ▶ Discuss strategies for having effective conversations about codes, while minimizing risk of breaching anti-trust laws



Disclaimer: This does not constitute legal advice. I am not an attorney!
Not referencing any specific insurance company - "Somewhere Insurance"



Company model



- ▶ Who we serve
- ▶ Settings
- ▶ Company size
- ▶ Organization structure
 - ▶ Overhead costs
 - ▶ BCBA's full time with benefits vs per diem
 - ▶ Part time or full time BTs
 - ▶ Travel
 - ▶ Grad students

Antitrust laws

- ▶ “The [Federal Trade Commission (FTC)]’s competition mission is to **enforce the rules of the competitive marketplace**”... “These laws promote vigorous competition and protect consumers from anticompetitive mergers and business practices.”
 - ▶ Three core federal antitrust laws:
 - ▶ [Sherman Act](#)
 - ▶ [Federal Trade Commission Act](#)
 - ▶ [Clayton Act](#)
 - ▶ Penalties
 - ▶ [Fines](#)
 - ▶ [Imprisonment](#)



Considerations in Dealings with Competitors

[For more information...](#)

DON'T

- ▶ Price Fixing
- ▶ Group Boycotts

DO

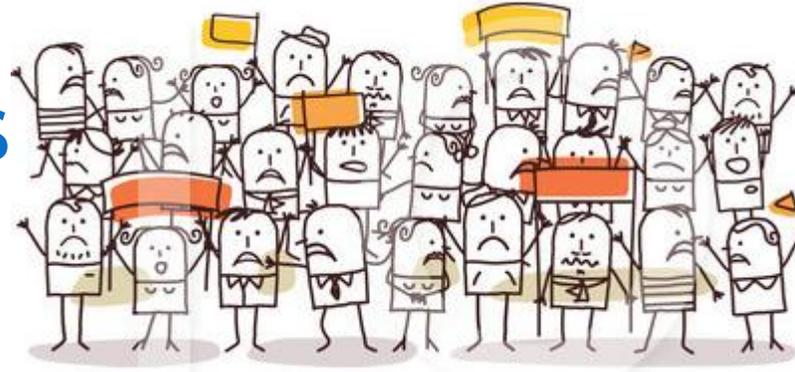
- ▶ Be informed
- ▶ Take Necessary Measures
- ▶ Trade Associations

DON'T: Price Fixing

- ▶ Agreement among competitors
- ▶ Regulates price
- ▶ Could mean:
 - ▶ Present or future prices
 - ▶ Pricing policies
 - ▶ Costs
 - ▶ Discounts
- ▶ Each company should establish *their own* pricing



DON'T: Group Boycotts



- ▶ If a company refuses to do business, it should be an independent decision
- ▶ Collective decisions between groups or individuals may be considered group boycott
- ▶ This may look like competitors agreeing not to do business unless certain terms are met
 - ▶ Example: Let's only go with insurance companies that agree to pay more than Somewhere Insurance

Example

- ▶ Two chiropractors conspired to fix prices, and boycotted a health plan. Wisconsin area. (C-3936)
 - ▶ See also Wisconsin Chiropractic Association (C-3943)
- ▶ In response to introduction of new billing codes
- ▶ Collective price increases
- ▶ Boycott

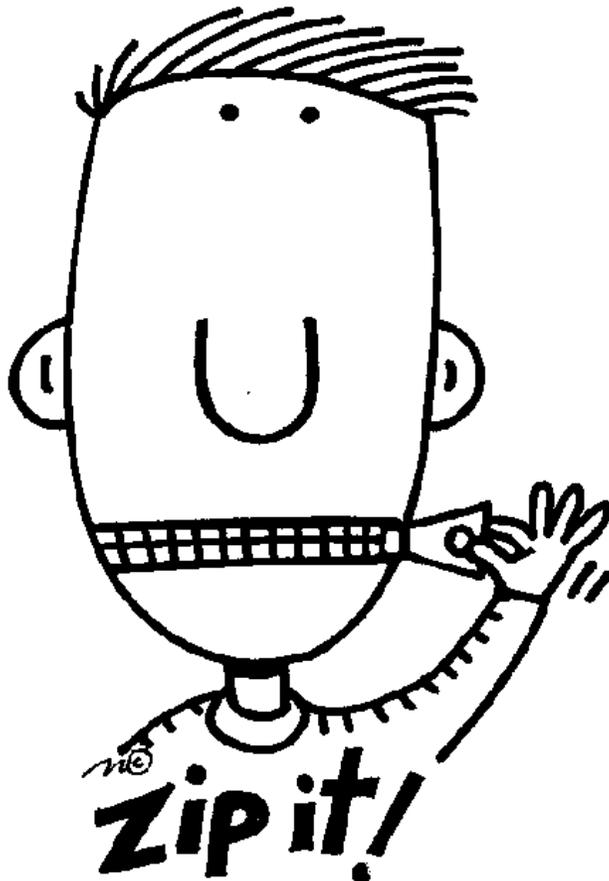


DON'T: A non-exhaustive list of what not to say

- ▶ “I charge \$X for code 0359T”
- ▶ “What is the going rate for H2019?”
- ▶ “Most providers I know charge between X and Y for H2019”
- ▶ “We would not be able to stay afloat if we charged less than X per unit of 0369T”
- ▶ “You should not accept rates below X for Somewhere Insurance”
- ▶ “Company X is willing to go higher than what they list as their standard rate”
- ▶ “How long does Somewhere Insurance authorize for you to complete your assessment”
- ▶ “If you account for inflation, then X is not enough of an increase relative to what Somewhere Insurance was paying 3 years ago”

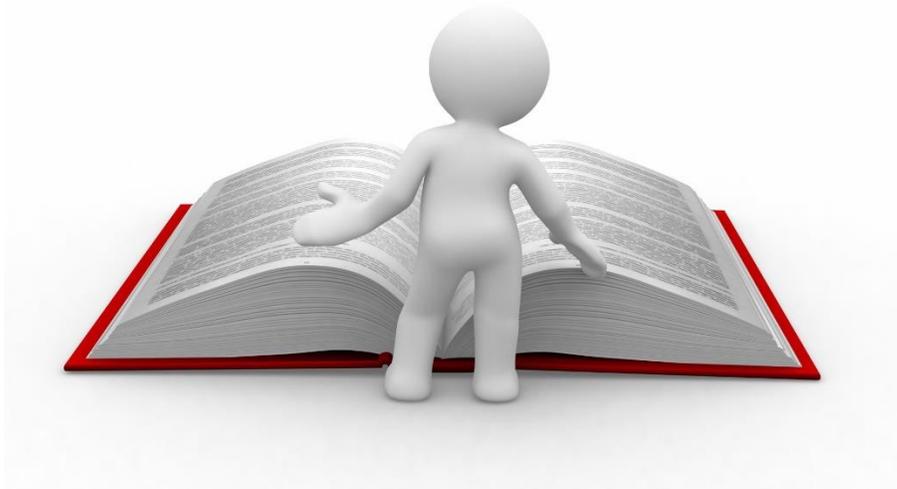
DON'T: Discuss...

- ▶ Your fee schedules
- ▶ Policies around raising rates
- ▶ The status of your negotiations
- ▶ Strategies for negotiations
- ▶ ...and so on...



DO: Be Informed

- ▶ Become an informed business owner, operator, behavior analyst, or behavior therapist
- ▶ Inform and educate team
- ▶ This is not just for management and executive staff
- ▶ Staff may not see this as a legal matter



DO: Take Necessary Measures

- ▶ Make business decisions and establish fee schedule independent of other providers
 - ▶ Cost analysis - how much does it cost you to operate
 - ▶ Need not be apples to oranges (code sets) - supervision, direct (F2F)/indirect
- ▶ Using your fee schedule appropriately and effectively
 - ▶ Variety of resources, AMA, others
- ▶ Get legal advice



DO: Work with Professional Trade Associations

- ▶ To establish industry standards
- ▶ Provide certain types of resources and support for their members

You can...

- ▶ Become a member of relevant Trade Associations
 - ▶ Support organizations financially
 - ▶ Stay current on information from them
 - ▶ Provide appropriate information when they seek it (with some restrictions - check with your attorney if you have questions)
- ▶ Join relevant groups within Trade Associations

References

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