

David Marx, Jr.



PUBLICATIONS, PRESENTATIONS & OTHER PROFESSIONAL ACTIVITIES

PUBLICATIONS

Books

Antitrust and Healthcare: Meeting the Challenge, co-authored with James H. Sneed, published by American Health Lawyers Association (1998).

Antitrust: Challenge of the Health Care Field, co-authored with James H. Sneed, published by National Health Lawyers Association (1990).

Articles

“Most-Favored-Nation Clauses Fall Out of Favor with Department of Justice,” *BNA, Inc. Health Insurance Report* (November 3, 2010)

“How Certain Products Can Be The Same, But Different,” *Law360* (October 4, 2010)

“Antitrust Implications of Clinically-Integrated Managed Care Contracting Networks and Accountable Care Organizations,” *CPI Antitrust Journal* (October 2010)

“Considering the Antitrust Consequences of Full-Service Hospitals’ Strategies for Dealing (or Not) with Physician-Owned Specialty Hospitals,” *AHLA Health Lawyers News* (June 2008)

“The ‘Proper’—And By That I Mean Limited—Role for Economists In Price-Fixing Litigation,” 38 *Loy. U. Chi. L.J.* 491 (2007)

“A General Counsel’s Guide to Avoiding the Healthcare Antitrust Minefield,” *Competition Law 360* (May 15, 2006)

“Messenger Models: What can the Agencies do to Prevent Provider Networks from Violating the Antitrust Laws?” *Health Lawyers News*, Vol. 8 No. 4, p. 24 (April 2004)

“FTC's Focus on Healthcare Providers: How Not to Become a Target” *G-2 Compliance Report* (January 2003)

“Messenger Model Provider Networks--The Problem Isn't Their Formation, It's Their Operation,” *Antitrust Health Care Chronicle*, Vol. 15 No. 2 (Summer 2001)

“New York's Attorney General Challenges the Affiliation of Two Hospitals, Claiming that their Operating Agreement is an Attempt to Fix Prices and Allocate Markets,” *The National Law Journal*, March 23, 1998, B5 (co-authored with Matthew Rosser).

“The Revised Antitrust Enforcement Policy for Health Care Supports Using the Rule of Reason to Analyze Physicians' Joint Ventures and Multiprovider Networks,” *The National Law Journal*, September 30, 1996, B10.

“Overcoming Antitrust Obstacles to Integrated Delivery,” *Healthcare Executive*, May/June 1997, p.18 (co-authored with Michael F. Anthony).

“Justice Department Consent Decrees with Danbury, Connecticut and St. Joseph, Missouri PHOs Set Forth Antitrust Rules for the Formation and Operation of Multiprovider Networks,” *The Health Lawyer*, Mid-Winter 1996, p. 14.

“Feds Will Look Closer at Provider Networks,” *PHO-IHO Report*, September 1995, p.1 (co-authored with Michael F. Anthony and James H. Sneed).

“The State Action Doctrine—Can it be Applied to a Private Hospital's Acquisition of a Public Hospital?” *The Health Lawyer*, Early Summer 1995, p.1.

“Insights for Hospitals: The 1994 Health Care Antitrust Enforcement Policy Statements,” 28 *J. Health and Hospital Law* 143 (1995).

“Fee-setting Activities of Provider Networks Likely to Receive Increased Antitrust Scrutiny,” *Reimbursement Advisor*, May 1995.

“The Policy and Economics Behind Health Care Reform,” *Antitrust and Evolving Health Care Markets*, Spring 1995 (co-authored with Simonetti Samuels).

“Federal Antitrust Merger Enforcement Standards: A Good Fit for the Hospital Industry?” 20 *J. Health Politics, Policy and Law* 137 (1995) (co-authored with Gloria J. Bazzoli, Richard J. Arnould, and Larry M. Manheim).

“The Federal Enforcement Agencies’ Enforcement Policy Toward Health Care Provider Networks: The Need for Greater Certainty in Changing Times,” *Health Law Handbook* 69 (1995) (co-authored with James H. Sneed).

“The 1994 Health Care Antitrust Enforcement Guidelines are Narrow Bridges to New Safety Zones,” *HealthSpan*, January 1995.

“Protecting Physician Networks from Antitrust Challenge,” *Physician’s News Digest*, April 1994.

“Provider Networks: Managing the Antitrust Risks of Managed Care Contracting,” *Health Law Handbook* 101 (1994) (co-authored with James H. Sneed).

“Antitrust Enforcement Encourages Health Care Providers to Cooperate Procompetitively,” *3 Annals of Health Law* 1 (1994) (co-authored with Chris Murphy).

“Clinton Administration’s New Antitrust Guidelines Duck Many Important Issues,” *HealthSpan*, November 1993.

“State Hospital Cooperation Acts: Are they Sufficient Antitrust Shelter for Hospital Collaborations?” *HealthSpan*, October 1993.

“Antitrust Prosecutions of Health Care Professionals: The Jury is Still Out,” *HealthSpan*, November 1992.

PRESENTATIONS

“Diagnosing Change: Creating the New Delivery System,” October 2010

“Tying and Bundling in the Sale of Healthcare Services and Products,” ABA Antitrust in Healthcare, May 2010

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2009

“Exclusionary Conduct Part II: The Current Landscape of Provider vs. Hospital Litigation”, May 2009

“Antitrust Issues,” AHLA Fundamentals of Health Law, December 2007

“The Litigation of an Exclusionary Practices Case,” AHLA Antitrust in Healthcare, September 2007

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2006

“The Antitrust Issues Associated with Physician Group Mergers and Acquisitions,” 7th Physician-Legal Issues Conference presented by the American Bar Association Health Law Section, June 2006

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2004

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2003

“Antitrust, Tax and Fraud and Abuse: Are the Laws Compatible?,” AHLA Fundamentals of Health Law, November 2002 and November 2003

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2002 (co-authored with Jennifer K. Schott)

“Antitrust Issues,” AHLA Fundamentals of Health Law, November 2001 (co-authored with Jennifer K. Schott and Sarah C. Pohlmann).

“Provider Networks: The Problem Isn’t Their Formation, It’s Their Operation,” AHLA Antitrust in Healthcare, May 2001.

“Are Negative Options Becoming Commercially Acceptable Practices?” Advertising Law in Illinois Seminar, May 1999.

“Antitrust Issues for Networks,” AAHA Antitrust in the Healthcare Field, February 1999 (co-authored with Lisa Scalpone).

“Review of Traditional Defenses: The Health Care Quality Improvement Act and The State Action Immunity,” NHLA/AAHA Antitrust in the Healthcare Field, February 1998 (co-authored with Sandra Muhlenbeck).

“The Agencies’ Application of the 1996 Health Care Enforcement Policy Statements to Physician Network Joint Ventures and Multiprovider Networks, AAHA Annual Meeting, June 1997 (co-authored with Carl T. Bergetz).

“Antitrust Issues in Non-Merger Cooperative Arrangements,” NHLA Antitrust in the Healthcare Field, February 1997 (co-authored with James H. Sneed).

“Recent Government Antitrust Enforcement Initiatives: The View from the Private Bar,” AAHA Annual Meeting, June 1996 (co-authored with James W. Lovett).

“Antitrust Issues in Non-Merger Cooperative Arrangements,” NHLA Antitrust in the Healthcare Field, February 1996 (co-authored with James H. Sneed).

MCDERMOTT NEWSLETTERS

“When Is Most Favored Too Favored?” October 2010

“Market Definition Spurs District Court’s Decision Denying Product Ownership Challenge,” September 2010

“New Merger Guidelines Underscore Importance of Internal Planning Documents,” August 2010

“Registered Nurse Wage Suppression Class Actions: Four Years of Litigation, Steady Defeats of Plaintiffs’ Claims,” March 2010

“FTC Issues Advisory Opinion Approving Clinical Integration Program,” April 2009

“Lessons from the Evanston Northwestern-Highland Park Hospital Merger Enforcement Action,” August 2007

“Supreme Court Clarifies Standard for Pleading Antitrust Conspiracy,” May 2007

“Registered Nurses Challenge Their Hospitals’ Participation in Surveys of Nurses’ Wages, Salaries, and Benefits as Violations of Federal Antitrust Laws,” August 2006

“State Action Doctrine Immunizes Public Hospital and the Commercial Payor from Antitrust Claim,” July 2005

“A General Counsel’s Guide to Avoiding the Healthcare Antitrust Minefield,” March 2005

“Administrative Law Judge Upholds U.S. Federal Trade Commission’s Complaint against North Texas Specialty Physicians,” November 2004

“The FTC and the Department of Justice Provide New Guidance: Antitrust Enforcement Against Health Care Providers To Remain A Top Priority,” September 2004

“FTC Health Care Workshop: What Physicians, Hospitals and Pharmaceutical Companies Need to Know,” October 2002

“U.S. Federal Trade Commission Renews Focus on Health Care Antitrust Enforcement,” July 2002

OTHER ACTIVITIES

Chairman, Antitrust Special Interest Substantive Law Committee, American Health Lawyers Association, 1996-1999.

Chairman, Antitrust Committee, Chicago Bar Association, 1996