

<b>Policy Name:</b>	Antitrust Compliance	<b>Policy Number:</b>	MGT.003
<b>Approval Body:</b>	Board of Directors	<b>Approval Date:</b>	12/12/18
<b>Review Committees &amp; Dates:</b>	VHAN Management by Compliance, Policies, and Procedures Committee (11/29/18)	<b>Effective Date:</b>	12/12/18
<b>Policy Type:</b>	<input checked="" type="checkbox"/> Board/Network <input type="checkbox"/> Internal	<b>Prior Effective Date(s):</b>	3/16/17; 3/12/14
<b>Responsible Administrator:</b>	David Posch, Executive Director	<b>Next Review Date:</b>	12/2021

## SCOPE

All VHAN Network Participants, members of VHAN Board of Directors and of Board committees and subcommittees, VHAN officers and medical directors, and VHAN senior management, other workforce members, and contractors.

## PURPOSE

To support VHAN's and VHAN Network Participants' compliance with antitrust laws.

## POLICY

The purpose of antitrust laws is to protect and promote competition. Vanderbilt Health Affiliated Network, LLC, (VHAN) adopts this Antitrust Compliance Policy out of respect for, and belief in, the antitrust laws, as well as in recognition of the potentially severe consequences of antitrust violations and the cost of defending against antitrust investigations and claims. VHAN desires to ensure its strict compliance with the antitrust laws, as well as strict compliance by its workforce members, contractors and agents, as well as VHAN Participants' workforce members and agents, including Practice Professionals.

### A. The Antitrust Laws

There are three principal Federal laws with which compliance is required. They are:

- **The Sherman Act.** Section 1 forbids any contract, combination, or conspiracy that restrains competition in interstate commerce. This law has been interpreted to prohibit practices such as price fixing, price stabilization, boycotts, division of markets, resale price maintenance and tie-in arrangements. Section 2 of the Sherman Act prohibits monopolizing, attempting to monopolize, and conspiring to monopolize.
- **The Clayton Act (1914)** prohibits or restricts specific conduct, such as "tie-in" sales and exclusive dealing arrangements. The law also prohibits certain mergers and acquisitions that may lessen competition.

- **The Federal Trade Commission Act (1914)** created the Federal Trade Commission and vested it with broad powers to define and prevent business practices that constitute “unfair methods of competition” or “unfair or deceptive acts or practices”. The law covers business activities that violate the Sherman Act, but goes further to protect consumers against business practices that are anticompetitive or deceptive.

In addition to these Federal laws, most states, including Tennessee, have antitrust laws that are similar to the federal laws described above but may sometimes be more restrictive.

### **B. Communications.**

Included among VHAN's Network Participants are many different health care systems, hospitals, physician practice groups, acute care facilities, and other providers. Under the antitrust laws, health care providers who are not part of a single legal entity—whether it be hospitals that are not part of the same system or physicians who are not in the same practice group—and whose services would be considered by patients or payers to be interchangeable, are treated as competitors. Although VHAN's purpose is procompetitive in nature—leading the transformation of health care delivery through providers collaborating to improve quality and reduce costs—its activities may create antitrust risks. VHAN and its Participants must ensure that their collaboration, and, in particular, their information sharing activities, do not result in a restraint of competition or create the appearance of an anticompetitive restraint.

All VHAN Network Participants, directors, officers, and workforce members must be aware of the ever-present antitrust risks—at formal and informal meetings and in telephone and electronic conversations and written correspondence. VHAN workforce members and contractors have an obligation to keep confidential and not share among the Network Participants any price or other competitively sensitive information of any individual Network Participant. Network Participants should not communicate outside of their own business about their own or competitors' prices, or have any discussions with other Network Participants on pricing methods, pricing strategies, margins, price increases, credit terms, or terms and conditions of sale unless these discussions occur as part of VHAN's contract negotiations on behalf of the network. In addition, Network Participants should not discuss workforce members' salaries. Network Participants have an obligation to terminate any discussion, seek advice from counsel, or, if necessary, terminate any meeting if the discussion might raise antitrust concerns.

All written communications and statements made by, or on behalf of, VHAN will comply with this Policy. VHAN's legal counsel must review in advance of publication all communications that may cover competitively sensitive topics or information, such as newsletters, press releases, speeches, statements, letters and VHAN's web site content.

### **C. Payer Contracting and Non-exclusivity**

Because of the procompetitive benefits that patients will receive from VHAN's achievement of clinical and financial integration, VHAN is permitted to negotiate payer contracts on behalf of its Network Participants. The antitrust laws require that, unless a contract entails the sharing of substantial financial risk, or VHAN achieves clinical integration, VHAN's Network Participants must negotiate the fees for their individual services directly with payers outside of VHAN. VHAN will take a conservative approach to payer contracting and will not negotiate the fees for individual Network Participant's services unless it can do so in compliance with the antitrust laws.

In formulating the fee schedules for its clinical and financial integration contracts, VHAN will incorporate the cost of program components that Participants will not sell individually, such as care management and coordination, pharmacy management, and quality and cost data collection and reporting. Network Participants should not use VHAN's fee schedule, financial incentives or care management fees when establishing the prices of their own services for sale to payers. In particular, no Network Participant should condition participation in a direct contract with a payer on the payer's agreeing on any VHAN rate.

VHAN is a nonexclusive organization. This means that, if a payer chooses not to contract with VHAN, VHAN must permit its Network Participants to contract directly with payers. Network Participants should not tell a payer that they contract exclusively through VHAN. In the event a payer chooses not to contract with VHAN, Participants should individually determine whether to contract directly with the payer based on what is in the best interest of each participant's business. The intent of this non-exclusivity policy is to prevent VHAN from gaining or exercising the power to increase the prices of its Network Participants' services above quality-adjusted competitive levels.

#### **D. Information Exchange, Data Collection, and Dissemination**

Collection of prices, costs and other competitively sensitive data often is a legitimate and necessary function of a network like VHAN. Nevertheless, because of the risk that the collected information could be used for unlawful purposes (for example, as the basis for an agreement to fix prices or restrict output between competitors outside of VHAN), a number of precautions must be taken:

- VHAN will clearly articulate the purpose and procompetitive benefits of the information collection and dissemination, and focus any collection project on those criteria.
- VHAN will limit the types of information it collects from Network Participants. Network Participants should submit only information reasonably necessary for VHAN to function efficiently and not share confidential non-public information regarding matters beyond the scope of VHAN.
- Competitively sensitive information will be collected by an independent third-party, such as a contractor or vendor, or by VHAN staff who have no price-setting responsibilities for Vanderbilt University Medical Center. Network Participants, including Vanderbilt University Medical Center, will not be involved in the collection or compilation of raw data.
- The collecting party, whether a contractor or VHAN, will treat Network Participants' competitively sensitive information as confidential and will not disclose it in its raw form to any other Network Participant or a third party.
- When VHAN publishes data following a collection, the report must aggregate the information so that individual Network Participants' competitively sensitive information is not disclosed and cannot be determined from the reported information provided.
- Network Participants should not share with VHAN or its agents competitively sensitive data that is not necessary for the pricing or sale of VHAN's products and services. If a Network Participant has a concern about a data request, it should report the concern to VHAN's Compliance Officer or legal counsel.

- VHAN must not embark on any new data collection or information exchange program without the approval of counsel. All data collection and information exchanges should be reviewed from time to time for antitrust concerns.

#### **E. VHAN Meetings**

To the extent feasible, VHAN will take the following steps to ensure that the antitrust laws and this Policy are followed with respect to all meetings of the VHAN Board of Directors, Committees, and other groups of Network Participants:

- Provide a notice of the meeting with a draft agenda presenting all topics to be discussed;
- Require meeting attendees who wish for a topic to be discussed at a meeting to contact VHAN prior to the meeting to have the topic placed on the agenda;
- Have VHAN legal counsel present, in person or by telephone, at all meetings at which competitively sensitive issues may be discussed;
- Terminate any discussion and seek the advice of VHAN legal counsel if the discussion might be construed to violate the antitrust laws or this Policy;
- Create minutes of each VHAN meeting that accurately describe the actions taken and, where appropriate, any rationale or additional pertinent discussion.

#### **F. Antitrust Compliance Education and Acknowledgements**

This Policy and a VHAN Antitrust Compliance Guide will be accessible to every VHAN workforce member, officer, director, committee member, contractor and Network Participant. VHAN's Antitrust Compliance Guide provides additional information on the antitrust laws and their application to VHAN, its operations, and Network Participants' activities. This Antitrust Compliance Policy and the Antitrust Compliance Guide cannot provide a comprehensive review of all antitrust-related issues that may arise and are not substitutes for legal advice. Those covered by this policy should address any questions or concerns about the legality of a particular practice or course of action to VHAN's Legal Counsel or Compliance Officer.

VHAN legal counsel will provide antitrust compliance training to VHAN's Board and committees, as deemed necessary. Legal counsel will also periodically update VHAN's Board, officers, and management about potential antitrust risks and recent developments in antitrust law relevant to VHAN's operations.

Each member of VHAN's Board and Board Committees and each VHAN workforce member must review this Policy and sign a statement agreeing to comply with this Policy and the antitrust laws.

#### **G. Violations**

VHAN's Compliance Policy, MGT.005, addresses reporting of compliance concerns, conducting investigations, and implementing corrective actions and/or sanctions for violations of this policy.

### PROCEDURES

- VHAN Form: MGT.F.006 VHAN Board and Committee Member Acknowledgements
- VHAN Form: COI.F.002 Workforce Acknowledgements
- VHAN Procedure: MGT.PR.003 Competitively Sensitive Confidential Information Collection, Access, and Use

### REFERENCES

- VHAN Participation Agreements
- Sections 1 and 2 of the Sherman Act, Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act (FTC Act).
- VHAN Policy: MGT.005 Compliance
- VHAN Antitrust Compliance Guide

### APPROVAL TRACKING

<b>Committee Name and/or Executive Title</b>	<b>Chairperson/Designee Name</b>	<b>Approval Date</b>
VHAN Management by Compliance, Policies, and Procedures Committee	Ann Olsen	11/29/2018
Board of Directors	C. Wright Pinson, M.D.	12/12/2018