

# Antitrust in Healthcare

## *Virtual Conference*

CO-SPONSORED BY THE ABA ANTITRUST LAW SECTION  
AND THE ABA HEALTH LAW SECTION

OCTOBER 28-30, 2020



AMERICANBARASSOCIATION

Antitrust Law Section



AMERICANBARASSOCIATION

Health Law Section

# Antitrust in Healthcare Virtual Conference

**October 28-30, 2020**

Join your colleagues for the **Antitrust in Healthcare Virtual Conference, October 28-30, 2020.**

The Antitrust in Healthcare Virtual Conference will be held on the **Convene** virtual conference platform and the sessions will be recorded. You'll receive an email from

**HLSevents@americanbar.org**, which will provide you with a unique link to access the platform. *Please note: CLE credit is not available for recorded programs of this conference. CLE credit is available only by attending the live presentations.*

**This year, we're also proud to use Crowd Compass as the event app for the Antitrust in Healthcare Virtual Conference!** Crowd Compass places conference information at your fingertips! After you register, stay tuned for an email from **HLSevents@americanbar.org** with more details.

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## 2020-2021 American Bar Association Antitrust Law Section Chair



**Gary P. Zanfagna,**  
Honeywell, Morris Plains, NJ

## 2020-2021 American Bar Association Health Law Section Chair



**Hal Katz,**  
Husch Blackwell, Austin, TX

## Antitrust in Healthcare Virtual Conference Planning Committee

### Co-Chairs:



**Christi Braun,**  
Vanderbilt University Medical Center, Nashville, TN



**Lauren Rackow,**  
Cahill, Gordon & Reindel LLP, New York, NY

- **Dale Grimes**, Bass, Berry & Sims PLC, Nashville, TN
- **Emily Lentz**, Cahill, Gordon & Reindel LLP, New York, NY
- **Peter Mucchetti**, Clifford Chance, Washington, D.C.

### Health Law Section Staff

**Simeon Carson**, Section Director  
**Carol Simmons**, Associate Director  
**Daryl C. Taylor, CMP**, Senior Meeting Planner  
**Jason Billups**, Program Specialist  
**Paige Rodenberg**, Meeting Assistant  
**Sara Calvillo**, Administrative Assistant

### Antitrust Law Section Staff

**Margaret Stafford**, Meetings Director

## Schedule At-a Glance

### Wednesday, October 28, 2020 – Day 1

9:00 – 9:10 am CT	Welcome
9:15 – 10:15 am CT	European Enforcers Roundtable
10:25 – 11:25 am CT	Going Viral: Burning Healthcare and Pharmaceuticals Issues
11:35 am – 12:35 pm CT	Healthcare Merger Recap: Managing Multiple Regulatory Reviews
12:45 – 1:45 pm CT	Antitrust Legislation: New Powers for State and Federal Enforcers
1:55 – 2:55 pm CT	Nibbles and Chatter

### Thursday, October 29, 2020 – Day 2

9:00 – 9:30 am CT	Discussion with the U.S. Department of Justice
9:40 – 10:40 am CT	Let's Get an Understanding: Criminal Antitrust Enforcement in the Provider Space
10:50 – 11:50 am CT	Anti-Steering and Anti-Tiering Provisions in Healthcare Contracts
12:00 – 1:00 pm CT	Difficult Deals and Tough Situations: Lessons Learned from Anthem-Cigna
1:10 – 2:10 pm CT	Now Trending: Vertical Healthcare Deals

### Friday, October 30, 2020 – Day 3

9:00 – 9:30 am CT	Discussion with the Federal Trade Commission
9:40 – 10:40 am CT	What's New in Reverse Payment Litigation
10:50 – 11:50 am CT	Just What the Doctor Ordered? FTC Treatment of Medical Device Mergers
12:00 – 1:00 pm CT	Does the Innovation End Justify the Exclusionary Means?
1:10 – 2:10 pm CT	Big Data Comes to a Healthcare Market Near You

## CONFERENCE AGENDA

**Please note: Faculty will be announced once all are finalized.**

### Wednesday, October 28 – Day 1

**9:00 – 9:10 am CT**

#### **Welcome**

- **Christi Braun**, Vanderbilt University Medical Center, Nashville, TN
- **Lauren Rackow**, Cahill Gordon & Reindel LLP, New York, NY

**9:15 – 10:15 am CT**

#### **European Enforcers Roundtable**

Join us for an update on significant developments impacting healthcare from across the pond. Topics will include the latest updates in pharmaceuticals, data, and changes due to COVID-19.

**10:25 – 11:25 am CT**

#### **Going Viral: Burning Healthcare and Pharmaceuticals Issues**

Recent enforcement actions involving federal and state governments and updated position or guidance documents, including the recently issued DOJ/FTC Vertical Merger Guidelines and DOJ's Merger Remedies Manual, will greatly affect healthcare merger enforcement and remedies.

Our experts will explore DOJ, FTC, and State Attorneys General enforcement actions involving healthcare providers, payers, pharmaceutical manufacturers, and biotech firms, including the DOJ's challenge to Geisinger's partial acquisition of Evangelical Community Hospital; the FTC suit against the Jefferson/Einstein merger; and other activities to prepare attendees going forward.

**11:35 am – 12:35 pm CT**

#### **Healthcare Merger Recap: Managing Multiple Regulatory Reviews**

Many healthcare transactions involve not only review by the FTC or DOJ Antitrust Division, but also clearance by state attorneys general, insurance departments and other healthcare regulatory bodies. The issues addressed by many of these state-based regulators extend beyond the competitive impact of transactions, which requires coordination of multiple sets of stakeholders.

Our panelists will discuss the complex interaction of multiple types of regulatory review in transactions that raise potential competition concerns, and ideas for managing the “who goes first” problem.

### Wednesday, October 28 (continued)

12:45 – 1:45 pm CT

#### **Antitrust Legislation: New Powers for State and Federal Enforcers**

State and federal lawmakers are aggressively pursuing new legislation that would expand the ability of enforcers to block mergers and challenge anticompetitive conduct, with [California and New York] leading the way in enacting such measures. This session will cover updates on the latest antitrust bills pending before Congress and state legislatures.

1:55 – 2:55 pm CT

#### **Nibbles and Chatter**

Join our virtual networking event for a wonderful opportunity to continue to the conversation and make connections with registered attendees of diverse backgrounds.

### Thursday, October 29 – Day 2

9:00 – 9:30 am CT

#### **Discussion with the U.S. Department of Justice**

- **Christi Braun**, Vanderbilt University Medical Center, Nashville, TN

9:40 – 10:40 am CT

#### **Let's Get an Understanding: Criminal Antitrust Enforcement in the Provider Space**

In April, the Deferred Prosecution Agreement in *United States v. Florida Cancer Specialists* resolved the first criminal enforcement action against a health care provider in nearly 30 years. What should physician practices, health systems, and other clinicians understand about criminal antitrust enforcement, now that it's clear there isn't a policy of exceptionalism for health care?

Our experts will provide strategies in managing risk through antitrust compliance programs, and other self-reporting mechanisms to resolve conduct issues, options for avoiding exclusion from public payor programs through deferred prosecution agreements, and other basics of criminal antitrust enforcement.

10:50 – 11:50 am CT

#### **Anti-Steering and Anti-Tiering Provisions in Healthcare Contracts**

Anti-steering and anti-tiering clauses in healthcare contracts between hospitals and insurers are receiving greater scrutiny from the DOJ. This session will analyze the pro-competitive reasons for why hospitals and insurers negotiate such contracts, as well as how these arrangements can allow a dominant hospital to limit the growth of a competitive provider market.

### Thursday, October 29 (continued)

**12:00 – 1:00 pm CT**

#### **Difficult Deals and Tough Situations: Lessons Learned from Anthem-Cigna**

The aftermath of the failed Anthem-Cigna transaction led to the discovery of best practices and recognition of key problem areas for counsel to reference while managing long, complex merger reviews.

Our presenters will examine the lessons from these considerations, including developing a sound antitrust risk assessment and agency strategy; negotiating appropriate provisions in the purchase agreement; engaging with joint defense counsel; managing concurrent FTC/DOJ and State AG antitrust reviews; and advising clients on integration planning and information exchange during a lengthy pre-closing period.

**1:10 – 2:10 pm CT**

#### **Now Trending: Vertical Healthcare Deals**

The ongoing trend of healthcare company amalgamations that offer diverse and complementary services spans the last several years. The recently released DOJ/FTC Vertical Merger Guidelines is welcomed by corporations and counsel as providing more transparency about the agencies' analytical decision making process in such transactions.

Our panel of private sector and government lawyers will consider the antitrust implications of vertical healthcare deals, how helpful the guidelines will be in practice, and the extent to which the guidelines may facilitate vertical transactions going forward.

### **Friday, October 30, 2020 – Day 3**

**9:00 – 9:30 am CT**

#### **Discussion with the Federal Trade Commission**

- **Lauren Rackow**, Cahill Gordon & Reindel LLP, New York, NY

**9:40 – 10:40 am CT**

#### **What's New in Reverse Payment Litigation**

The seminal Supreme Court decision *FTC v. Actavis* has prompted expansive litigation, including several new cases filed in the last year, while other actions have resulted in settlements totaling hundreds of millions of dollars.

This session will examine how courts and parties continue to grapple with unresolved issues, including how to define an unlawful “payment”, the strength of underlying patent litigation, and whether acceleration clauses may be unlawful.

### Friday, October 30 (continued)

**10:50 – 11:50 am CT**

#### **Just What the Doctor Ordered? FTC Treatment of Medical Device Mergers**

The Federal Trade Commission scrutinized multiple recent high-profile mergers of medical device companies. Major transactions – including GE/Danaher, Ossur Americas Holdings/College Park Industries, Boston Scientific/BTG, and Fresenius Medical Care/NxStage Medical – all have undergone lengthy reviews.

Our panelists will discuss the number of competitors needed to prevent a lessening of competition, the importance of potential competition, vertical aspects of mergers, and other key competitive issues in the medical device industry.

**12:00 – 1:00 pm CT**

#### **Does the Innovation End Justify the Exclusionary Means?**

Patent and antitrust law recognize that some exclusion of competitors can benefit innovation. But which is the better driver of innovation: competition or a period of limited exclusion? What does the latest empirical work show, especially in sectors characterized by both innovation and dominance, such as pharmaceuticals and medical devices? How should courts weigh innovation defenses to exclusionary conduct?

Our presenters will highlight the practices of delaying or foreclosing competition and the possible responses to these actions.

**1:10 – 2:10 pm CT**

#### **Big Data Comes to a Healthcare Market Near You**

Big data in healthcare is rapidly evolving. Data on patients' lifestyles and choices can be collected from electronic medical records, wearables, social media, and supermarket data. What does it mean for antitrust law? Where is the balance between data as a tool to enhance patient outcomes or as an instrument that may suppress competition?

Our subject matter experts will delve into the benefits of big data, including improving patient care and reduction of duplicative testing and costs, as well as explore the potential dangers involving providers steering patients, and collusion.

## CONFERENCE INFORMATION

**Online registration:** [ambar.org/AT2020](http://ambar.org/AT2020)

**Hashtag:** #AT2020

### **Cancellation Policy**

A refund will be issued upon written cancellation received no later than October 21, 2020, minus a \$75 handling charge for each registration. Cancellations received after this date cannot be refunded but substitutions are encouraged. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

### **CLE Credit**

The ABA will seek 12.0 hours of CLE credit, including 1.0 hour of ethics credit, in 60-minute states, and 12.0 hours of CLE credit, including 1.0 hour of ethics credit, in 50-minute states for this program. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website at [ambar.org/AT2020](http://ambar.org/AT2020) for program CLE details or visit [www.americanbar.org/mcle](http://www.americanbar.org/mcle) for general information on CLE at the ABA.

### **Health Law Section Membership**

As an added bonus, the member's tuition rate will be available to registrants who become new members of the ABA Health Law Section. Membership dues are not deductible as charitable contributions for federal income tax purposes, but such dues may be deductible as a business expense. American Bar Association membership is required to become a member of the Health Law Section.

### **Tax Deduction for Educational Expenses**

An income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (See Treas. Reg. 1.162-5) (*Coughlin vs. Commissioners*, 203 F. 2d 307).

### **Services for Persons with Disabilities**

If special arrangements are required for an individual with a disability to attend this program, please contact the Health Law Section staff at (312) 988-5146 or [HLSevents@americanbar.org](mailto:HLSevents@americanbar.org).

## Registration Form

Online: [ambar.org/AT2020](http://ambar.org/AT2020)

REGISTRATION FEES	Full Conference Price:	Individual Day Price:
Antitrust or Health Law Member	\$199	\$99
In-House Counsel/Solo Practitioner	\$95	\$55
Government/Academic (must be full time)	\$95	\$55
Law Student	\$45	\$25
ABA Member - Non-Antitrust or Health Law Section Member	\$299	\$149
General Attendee	\$450	\$160
I would like to make a one-time tax-deductible gift to the Health Law Section's Program Support Fund 501(c)3 (visit <a href="http://donate.americanbar.org/healthlaw">donate.americanbar.org/healthlaw</a> for details)		
<b>TOTAL FEES ENCLOSED</b>		

### METHOD OF PAYMENT

Check enclosed (made payable to American Bar Association)

Credit Card:  VISA  MasterCard  American Express

Card #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Cardholder Signature:

## Health Law Section UPCOMING EVENTS

**18<sup>th</sup> Annual Washington Health Law Summit Virtual Conference**  
December 7-9, 2020

**22<sup>nd</sup> Annual Conference on Emerging Issues in Healthcare Law**  
March 10-13, 2021  
Loew's Hollywood Hotel  
Los Angeles, CA

**Physicians Legal Issues: Healthcare Delivery & Innovation Conference**  
September 23-25, 2021  
The Fairmont Hotel Millennium Park  
Chicago, IL

Please contact the Health Law Section at (312) 988-5176, or email [HLSevents@americanbar.org](mailto:HLSevents@americanbar.org), for more information.