

Update on Antitrust Developments Affecting Professional Societies and Certification Bodies

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September 9, 2026



The Legal Framework

- Members of professional societies are direct competitors selling services to customers
- Certification organizations may have the power to determine which individuals or organizations are authorized to compete in a market
- The antitrust laws apply to certain competitor agreements and to certain unilateral conduct that excludes competitors
- Federal and state laws prohibit “unfair competition” and “unfair or deceptive acts or practices in or affecting commerce”

Lincoln Memorial University v. American Veterinary Medical Association

- Dismissed without prejudice (September 1, 2026)
 - LMU-TN probationary accreditation status has potential for good cause extension or grant of full accreditation, rather than terminal accreditation
 - AVMA provided LMU-FL with a Letter of Reasonable Assurance, and AVMA's website now lists LMU-FL as a “provisionally accredited college[.]”
 - LMU's claims not ripe for determination
 - No showing of current harms: compliance with internal appeal procedures ≠ harm
 - Threatened harm – denial of accredited status – too speculative at this stage

American College of Nurse-Midwives v. Mississippi State Board of Medical Licensure

- Defendant filed an Answer and not a motion to dismiss
- Status conference today
- Slow going

FTC Civil Investigative Demands to American Academy of Pediatrics and Endocrine Society

- FTC denied motions to quash (FTC; March 23, 2026)
- AAP and Endocrine Society won separate lawsuits to quash the CIDs (D.C. federal court)
- New case: FTC (with Alaska, Iowa, Nebraska, and Texas) sued the World Professional Association for Transgender Health for alleged deceptive trade practices (Texas federal court; June 17, 2026)
- Old case: Florida AG sued transgender organizations for alleged deceptive trade practices (Florida state court; December 9, 2025)
 - Defendants obtained a stay (Illinois federal court; June 2, 2026)
 - Stay lifted pending en banc review (7th Circuit Court of Appeals; July 8, 2026)
- Forum matters

New Developments: *American Osteopathic Association v. American Board of Internal Medicine*

- AOA and ABIM both offer board certification in internal medicine
- Before: Each AOA and ABIM permitted residency training program directors with either board certification to attest to program completion by a candidate seeking to sit for either organization's board certification exam
- Now:
 - ABIM will permit only a candidate from a program run by a director certified by ABIM to take the ABIM board certification exam
 - AOA still permits candidates from programs run by either ABIM-certified directors or AOA-certified directors to take the AOA board certification exam
- AOA lawsuit
 - Section 1 of Sherman Act (agreement to unreasonably restrain trade): 3 claims
 - Section 2 of Sherman Act (monopolization): 1 claim
- ABIM moves to dismiss all claims
- July 20, 2026:
 - District Court grants motion to dismiss Section 1 claims: no plausible allegation of an agreement to unreasonably restrain trade
 - District Court denies motion to dismiss Section 2 claim: the allegations that the new attestation requirement (i) has no legitimate justification and (ii) excludes AOA-certified program directors from the market are enough to proceed

New Developments: Federal and State Challenges to ABA Accreditation of Law Schools

- Federal government
 - FTC/DOJ recommend that the Supreme Court of Tennessee to end Tennessee's reliance on ABA law school accreditation (April 30, 2026)
 - ABA has an accreditation monopoly
 - Tennessee should open up the accreditation market to competition
 - U.S. Department of Education Staff has recommended that the U.S. Department of Education deny recognition to ABA's law school accreditation arm (August 21, 2026)
 - No direct assertions of monopolization, harm to competition
 - Assertions that the accreditation arm is not Separate and Independent from the ABA
- States: Some are ending the ABA's status as the sole qualifying accreditor for law schools

QUESTIONS?