

BEFORE THE FEDERAL ELECTION COMMISSION 2011 MAY 12 PM 12:45

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In the Matter of)	
)	
American Association of Physician)	MUR 6326
Specialists, Inc.; American Association)	
of Physician Specialists, Inc. PAC and)	
Stephen Montes, in his official capacity)	
as treasurer)	

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CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on May 12, 2011, the Commission decided by a vote of 6-0 to take the following actions in MUR 6326:

1. Accept the conciliation agreement with the American Association of Physician Specialists, Inc., and the American Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, as recommended in the General Counsel's Memorandum dated April 27, 2011.
2. Take no further action as to William J. Carbone.
3. Approve the appropriate letters.
4. Close the file.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

May 12, 2011
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 17 2011

Timothy J. Bell
4532 West Kennedy Boulevard
Suite 264
Tampa, FL 33609

RE: MUR 6326
American Association of Physician Specialists, Inc.
American Association of Physician Specialists, Inc.
PAC and Stephen Montes, in his official capacity
as treasurer
William J. Carbone

Dear Mr. Bell:

This is in reference to the complaint you filed with the Federal Election Commission ("the Commission") on July 10, 2010 and its supplement dated August 11, 2010, concerning the American Association of Physician Specialists, Inc., the American Association of Physician Specialists, Inc. PAC ("the Committee"), and William J. Carbone (collectively "the Respondents"). On February 1, 2011, the Commission found that there was reason to believe that Respondents violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(b), a provision of the Act. On May 12, 2011, a conciliation agreement signed by the American Association of Physician Specialists, Inc., and the American Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, was accepted by the Commission. Also on this date, the Commission determined to take no further action as to William J. Carbone. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the

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Timothy J. Bell
MUR 6326
Page 2

agreement with the American Association of Physician Specialists, Inc., and the Committee is enclosed for your information. The Factual and Legal Analysis, which sets forth the basis for the Commission's reason to believe finding as to William J. Carbone, is also enclosed.

If you have any questions, please contact Shana M. Broussard at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosures
Conciliation Agreement
Factual and Legal Analysis

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OFFICE OF GENERAL
COUNSEL
MUR 6326

BEFORE THE FEDERAL ELECTION COMMISSION

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3 In the Matter of)
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5)
6 American Association of Physician Specialists, Inc.)
7 American Association of Physician Specialists, Inc. PAC)
8 and Stephen Montes, in his official capacity as treasurer)
9)
10)

CONCILIATION AGREEMENT

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14 This matter was initiated by a signed, sworn, and notarized complaint by Timothy
15 J. Bell. The Federal Election Commission ("Commission") found reason to believe that
16 American Association of Physician Specialists, Inc., American Association of Physician
17 Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, violated
18 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the
19 Act"), and that the American Association of Physician Specialists, Inc. PAC and Stephen
20 Montes, in his official capacity as treasurer, also violated 2 U.S.C. § 434(b) (collectively
21 "Respondents").

22 NOW, THEREFORE, the Commission and the Respondents, having participated
23 in informal methods of conciliation, prior to a finding of probable cause to believe, do
24 hereby agree as follows:

25 I. The Commission has jurisdiction over the Respondents and the subject
26 matter of this proceeding, and this agreement has the effect of an agreement entered
27 pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

28 II. Respondents have had a reasonable opportunity to demonstrate that no
29 action should be taken in this matter.

30 III. Respondents enter voluntarily into this agreement with the Commission.

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1 IV. The pertinent facts in this matter are as follows:

2 1. American Association of Physician Specialists, Inc. PAC, and
3 Stephen Montes, in his official capacity as treasurer, ("the Committee") is the separate
4 segregated fund ("SSF") of the American Association of Physician Specialists, Inc.
5 ("AAPS"), a corporation organized under section 501(c)(6) of the Internal Revenue
6 Code. William J. Carbone is the Chief Executive Officer of AAPS. The Committee is
7 registered with the Commission and is a political committee within the meaning of
8 2 U.S.C. § 431(4)(B).

9 2. The Act prohibits corporations from making any contribution in
10 connection with a Federal election, and prohibits political committees from knowingly
11 accepting or receiving such contributions. 2 U.S.C. § 441b(a). This prohibition extends
12 to corporations using general treasury funds to make contributions to their SSFs. *Id*

13 3. Political committees must disclose all receipts and disbursements.
14 See 2 U.S.C. § 434(b).

15 4. On March 10 and 11, 2008, AAPS deposited \$1,300 intended for
16 its National Initiative Fund ("NIF") account into the Committee's account. On April 4,
17 2008, the Committee disbursed the \$1,300 back to AAPS. The Committee did not
18 disclose its receipt or disbursement of the \$1,300.

19 5. AAPS deposited \$20,000 in general treasury funds into the
20 Committee's account on April 2, 2008. On April 15, 2008, the Committee disbursed
21 \$14,465 back to AAPS. The Committee did not disclose its receipt of the \$20,000 or its
22 disbursement of the \$14,465.

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1 6. The remaining \$5,535 of AAPS corporate funds stayed in the
2 Committee's account until April 13, 2009, when the Committee disbursed the funds back
3 to AAPS. The Committee did not disclose its disbursement of the \$5,335.

4 V. 1. Respondents violated 2 U.S.C. § 441b(a) as follows:

5 a. American Association of Physician Specialists, Inc.
6 violated 2 U.S.C. § 441b(a) by making a prohibited corporate contribution.

7 b. American Association of Physician Specialists, Inc. PAC
8 and Stephen Montes, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by
9 receiving a prohibited corporate contribution.

10 2. American Association of Physician Specialists Inc. PAC and
11 Stephen Montes, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by
12 failing to disclose \$21,300 in receipts and disbursements.

13 VI. Respondents will take the following actions:

14 1. Respondents will pay a civil penalty to the Federal Election
15 Commission in the amount of Five Thousand Five Hundred Dollars (\$5,500), pursuant
16 to 2 U.S.C. § 437g(a)(5)(A).

17 2. Respondents will cease and desist from violating 2 U.S.C.
18 § 441b(a). American Association of Physician Specialists, Inc. PAC and Stephen
19 Montes, in his official capacity as treasurer, will cease and desist from violating
20 2 U.S.C. § 434(b).

21 3. American Association of Physician Specialists, Inc. PAC will
22 amend its disclosure reports to disclose the transactions described in this conciliation
23 agreement.

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1 **VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.**
2 **§ 437g(a)(1) concerning the matters at issue herein or on its own motion, may review**
3 **compliance with this agreement. If the Commission believes that this agreement or any**
4 **requirement thereof has been violated, it may institute a civil action for relief in the**
5 **United States District Court for the District of Columbia.**

6 **VIII. This agreement shall become effective as of the date that all parties hereto**
7 **have executed same and the Commission has approved the entire agreement.**

8 **IX. Respondents shall have no more than 30 days from the date this agreement**
9 **becomes effective to comply with and implement the requirements contained in this**
10 **agreement and to so notify the Commission.**

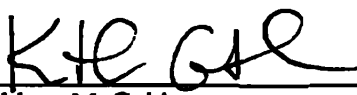
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1 X. This Conciliation Agreement constitutes the entire agreement between the
2 parties on the matters raised herein, and no other statement, promise, or agreement, either
3 written or oral, made by either party or by agents of either party, that is not contained in
4 this written agreement shall be enforceable.

5 FOR THE COMMISSION:

6 Christopher Hughey
7 Acting General Counsel

8 BY:  5-17-11
9 Kathleen M. Guith Date
10 Acting Associate General Counsel
11 for Enforcement

12 FOR THE RESPONDENTS:

13  March 22, 2011
14 Name: MICHAEL BAYES Date
15 Position: COUNSEL TO AAPS
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: American Association of Physician Specialists, Inc. **MUR 6326**
American Association of Physician Specialists, Inc. PAC
and Stephen Montes, in his official capacity as treasurer
William J. Carbone

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission (“the Commission”) by Timothy J. Bell. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The complaint alleges that the American Association of Physician Specialists, Inc. (“AAPS”), a 501(c)(6) corporation, its separate segregated fund (“SSF”), the American Association of Physician Specialists, Inc. PAC (the “Committee”) and an AAPS executive violated the Federal Election Campaign Act of 1971, as amended (“the Act”), because AAPS made, at the executive’s authorization, and the Committee accepted, a prohibited corporate contribution in the amount of \$20,000 in 2007 or 2008. *See* 2 U.S.C. § 441b(a). Specifically, complainant alleges that AAPS’s Chief Executive Officer (“CEO”), William J. Carbone, authorized Anthony Durante, AAPS’s Director of Finance and Operations, to disburse \$20,000 from AAPS’s general operating funds account to the Committee’s bank account. Complaint at 2.

1 Complainant also alleges that the Committee's treasurer knew about the \$20,000 deposit at the
2 time it occurred.¹ *Id.*

3 In a joint response, Respondents assert that the complainant is a disgruntled employee
4 terminated for poor job performance. *See* Response at 1 and Attached Affidavit of Linda
5 Murphy. Respondents acknowledge, however, that AAPS transferred \$20,000 from its general
6 operating account to the Committee's bank account in 2008. They assert that they transferred
7 funds to the Committee's account to prevent check overage charges due to bookkeeping errors
8 and mis-deposited funds. Response at 2. Respondents maintain that the majority of these funds
9 remained in the Committee's bank account only temporarily, and that the Committee spent no
10 corporate funds. Response at 3.

11 Based upon the complaint, the response, and other available information, the Commission
12 finds reason to believe that AAPS made, and that the Committee accepted, a prohibited corporate
13 contribution. *See* 2 U.S.C. § 441b(a). Because section 441b(a) imposes liability for any officer
14 or director of a corporation that consents to a contribution by a corporation, the Commission
15 finds reason to believe that William J. Carbone, the CEO of AAPS, violated 2 U.S.C. § 441b(a)
16 by authorizing the transfer of funds. In addition, because the Committee did not disclose its
17 receipt and disbursement of the funds at issue in its disclosure reports, the Commission finds
18 reason to believe that the Committee violated 2 U.S.C. § 434(b).

19

¹ Complainant, a former employee of AAPS, filed a supplement to the complaint that reaffirmed his original allegations and acknowledged that he did not timely input the Committee's contributor information into the PAC software, with the result that the Committee had to amend several of its 2009 disclosure reports in January 2010. *See* Supplemental Complaint.

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1 **III. FACTUAL AND LEGAL ANALYSIS**

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3 **A. Factual Background**

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5 The complainant, a former Director of Governmental Affairs for AAPS, asserts that on
6 January 28, 2010, while preparing the Committee's 2009 Year-End Report, he "discovered that
7 the final numbers were several thousand dollars out of balance." Complaint at 1. Complainant
8 states that he contacted Anthony Durante, AAPS's Director of Finance and Operations, who
9 advised him that in 2007 or 2008, a former AAPS employee made several thousand dollars in
10 campaign contributions with checks from the Committee's account without adequate funds to
11 cover the amounts. *Id.* Complainant alleges that Mr. Durante advised him that AAPS's CEO,
12 Williams J. Carbone, authorized Durante to disburse \$20,000 from AAPS's general fund bank
13 account to the Committee's bank account. Complaint at 1-2. Complainant also alleges that on
14 that same day he spoke with the Committee's treasurer, who advised the complainant that he
15 knew of the disbursement at the time it occurred. Complaint at 2.

16 The response states that on April 2, 2008, AAPS transferred \$20,000 in general operating
17 funds to the Committee's bank account. Response at 2 and 4. Respondents assert that they
18 deposited the funds in the Committee's account as a precautionary measure to prevent checks
19 from being returned for insufficient funds due to bookkeeping and mis-deposit errors, but that
20 the Committee never used the funds, and transferred \$14,465 back to AAPS within thirteen days.
21 *Id.* at 3-4.

22 Respondents provide the following context for the AAPS \$20,000 disbursement to the
23 Committee. In February 2008, AAPS moved the Committee's account from Bank of America to
24 SunTrust. Response at 1. AAPS opened a new PAC account with SunTrust, but kept the
25 Committee's Bank of America account open for pending transactions within the same timeframe.

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1 Response at 2. Respondents also moved the account for AAPS's National Initiative Fund
2 ("NIF") from Bank of America to SunTrust.² *Id.* Both Bank of America accounts were held
3 open and the new accounts at SunTrust were issued temporary checks and deposit slips. *Id.*
4 According to the response, in April 2008, Respondents discovered that AAPS's bookkeeper
5 mistakenly deposited \$1,300 intended for the NIF account into the Committee's SunTrust PAC
6 account on March 10 and 11, 2008. *Id.*

7 Although it is not clear why, Respondents state that the mis-deposit of \$1,300 of NIF's
8 funds into the Committee's account could result in the Committee having checks returned for
9 insufficient funds. *Id.* at 2. Therefore, AAPS "temporarily transferred" \$20,000 on April 2,
10 2008 from its general operating account to the new SunTrust PAC account. *Id.* On April 4,
11 2008, the Committee transferred the \$1,300 intended for NIF back to the NIF account. *Id.*
12 Thereafter, on April 15, 2008, AAPS transferred \$14,465 of the \$20,000 from the Committee's
13 account back to AAPS's general operating account. The remaining \$5,535, however, stayed in
14 the Committee's account for almost another year, until the Committee transferred it back to
15 AAPS on April 13, 2009. *Id.* at 2-3. The response asserts that the \$5,535 remained in the
16 Committee's account in order to complete the bank account move from Bank of America to
17 SunTrust, to resolve the initial issues that prompted the account move, to complete unrelated
18 internal audits, and to complete a full audit of the Committee's account. *Id.* at 3. The response
19 did not include a copy of any audit findings.

20 The Committee did not disclose any of the transactions described above. Specifically,
21 the Committee did not disclose its receipt of \$1,300 in NIF funds or its \$1,300 disbursement of

² The Response provides no further information on the NIF. According to AAPS's website, NIF lobbies on behalf of AAPS before members of Congress, state legislatures, state and federal courts, state medical boards, insurance companies, and hospital systems. See <http://www.aapsus.org/National-Initiative-Fund-NIF>. NIF is not registered with the Commission.

1 the funds to the NIF account. *See* Committee's Amended April 2008 Quarterly and Amended
2 July 2008 Quarterly Reports. In addition, the Committee did not disclose its receipt of \$20,000
3 from AAPS, the transfer of \$14,465 back to AAPS, the \$5,535 that remained in the Committee's
4 account until April 2009, or the return of the \$5,535 to AAPS. *See* Committee Amended July
5 2008 Quarterly and Amended July 2009 Quarterly Reports.

6 **B. Analysis**

7
8 **1. Prohibited Corporate Contribution**

9
10 The Act prohibits corporations from making any contribution in connection with a
11 Federal election, and prohibits political committees from knowingly accepting or receiving such
12 contributions. 2 U.S.C. § 441b(a). This prohibition extends to corporations using general
13 treasury funds to make contributions to their SSFs. *Id.*; *see also Campaign Guide for*
14 *Corporations and Labor Organizations* (2007), pg. 15. However, the Act provides an exception
15 to the prohibition by excluding from the definition of the term "contribution" a corporation's
16 payment of the costs incurred in the establishment, administration and solicitation of
17 contributions to an SSF. 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii). The
18 Commission's regulations define the terms "establishment, administration, and solicitation costs"
19 as the costs of office space, phones, salaries, utilities, supplies, legal and accounting fees,
20 fundraising and other expenses incurred in setting up and running an SSF established by a
21 corporation. 11 C.F.R. § 114.1(b). The connected organization may pay these costs directly or
22 through a separate administrative account, but it cannot transfer corporate funds into its SSF's
23 bank account. *See* 2 U.S.C. § 441b(b)(2)(C); *see also* 11 C.F.R. §§ 114.1(b) and 114.5(b).

24 While acknowledging that AAPS transferred \$20,000 to the Committee from its
25 corporate treasury funds, Respondents contend that because the funds were never used, the

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1 Respondents did not violate the Act. Response at 2–3. According to the response, \$14,465 of
2 the original \$20,000 remained in the Committee’s account for a short period, April 2, 2008
3 through April 15, 2008, and that during this time period, the Committee spent only \$718.95. *Id.*
4 The Respondents contend that AAPS kept the remaining \$5,535 in the Committee’s account until
5 AAPS concluded the bank transfers and an audit. *Id.* at 3.³ The response provides the
6 Committee’s cash-on-hand figures, as disclosed in its 2008 July Quarterly Report through its
7 2009 July Quarterly Report, which range between \$23,374.10 and \$36,373.98, to show that the
8 Committee did not spend the \$5,535 in corporate funds retained in the Committee’s account
9 before transferring it back to AAPS on April 13, 2009. *See id.*⁴

10 Even if AAPS was concerned that the Committee might have checks returned for
11 insufficient funds, and regardless of the fact that the Committee’s cash-on-hand exceeded the
12 amount of the corporate funds provided by AAPS, AAPS could not make a corporate
13 contribution to the Committee’s bank account. *See* 2 U.S.C. § 441b(a). If checks were returned
14 for insufficient funds, AAPS could have paid any bank charges directly or through a separate
15 administrative account. *See* 11 C.F.R. §§ 114.1(b) and 114.5(b); *see also* Advisory Opinion
16 1981-19 (LAMPAC) (connected organization may establish a separate administrative account for
17 SSF administrative and fundraising expenses). In the alternative, AAPS could have reimbursed

³ The Committee’s April 2008 Quarterly Report disclosed the receipt of “returned checks” totaling \$13,000 on January 31, 2008. The Reports Analysis Division (“RAD”) sent an RFAI to the Committee on May 16, 2008, questioning these transactions. In a May 19, 2008 miscellaneous report, the Committee noted that these entries were incorrect and were actually “voided check[s].” The complainant alluded to a former AAPS employee who allegedly had written checks for several thousands of dollars from the Committee’s account which the Committee could not cover. It is unclear based on the available information whether the transactions alluded to by complainant or the RAD exchange with the Committee relate to AAPS’s transfer of \$20,000 to the Committee’s account.

⁴ The response mistakenly labeled the Committee’s 2009 April Quarterly and 2009 July Quarterly Reports as 2008 Reports. *See* Response at 3.

1 the Committee for such charges, provided that the reimbursement was made within 30 days of
2 the Committee's payment of the charges. *See* 11 C.F.R. § 114.5(b)(3).

3 Accordingly, the Commission finds reason to believe that the American Association of
4 Physician Specialists, Inc. made, and that the American Association of Physician Specialists, Inc.
5 PAC and Stephen Montes, in his official capacity as treasurer, knowingly accepted, prohibited
6 corporate contributions in violation of 2 U.S.C. § 441b(a).

7 The Act also prohibits any officer or director of a corporation from consenting to the
8 making of corporate contributions. 2 U.S.C. § 441b(a). The response does not state who at
9 AAPS authorized the transfer, leaving un rebutted complainant's allegation that AAPS's CEO,
10 William J. Carbone, directed Anthony Durante, AAPS's Director of Finance and Operations, to
11 make the transfer of \$20,000 in corporate funds to the Committee's account. Accordingly, based
12 on the available information, it appears that Mr. Carbone, AAPS's CEO, consented to a
13 prohibited corporation contribution. Therefore, the Commission finds reason to believe that
14 William J. Carbone violated 2 U.S.C. § 441b(a).

15 **2. Reporting**

16 A political committee's disclosure reports must disclose all receipts and disbursements.
17 *See* 2 U.S.C. § 434(b). Because the Committee did not disclose any of the transfers of corporate
18 funds in and out of the Committee's account, the Commission finds reason to believe that the
19 American Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official
20 capacity as treasurer, violated 2 U.S.C. § 434(b).

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