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January 19, 2009

Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office  
Federal Election Commission  
999 E Street N.W., Washington, D.C. 20463

Re: **ADR 471 (RR 07L-43)**  
**Oklahoma State Medical Association PAC**

Dear Ms. Fraser:

This letter provides proposed stipulations and terms that mitigate any errors committed by the Oklahoma State Medical Association PAC ("OSMA PAC") in making required campaign finance reports to the Federal Election Commission ("FEC") in 2003-2006.

### Summary of the Case

*During a routine internal audit in 2006 OSMA PAC discovered errors in three different reports filed with the FEC. OSMA PAC failed to report contributions to Oklahoma state committees and candidates. The inadvertent errors were due to personnel changes in the OSMA PAC staff responsible for preparing the reports. OSMA PAC forthwith contacted the FEC and took remedial action at the direction of the FEC staff to correct the errors. Accurate amended reports in all cases were filed on April 25, 2007.*

*This is a case of mistake, not malice. There is no mens rea on the part of OSMA PAC that might justify a stiff civil fine. No monetary penalty should be imposed by the FEC, or if a fine is imposed, it should be minimal since there was no harm to anyone as a result of the mistaken reports. This is a prototypical case of harmless error. Despite the errors, campaign contributions were reported by*

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**OSMA PAC consistent with the public disclosure purpose of both federal and state campaign finance law. The errors were unintentional and once discovered were self-reported to the FEC by OSMA PAC and corrected. The three reporting errors should be treated as a single error; once the first error occurred, the mistake was repeated until the OSMA PAC audit illuminated it. It is noteworthy that all OSMA PAC transfers to federal committees were timely reported.**

**Because the dissolution of OSMA PAC is contemplated in the near future, there is no need for punishment as either a deterrent or preventive measure. There is no likelihood of a recurrence. Indeed, any penalty would serve only as retributive punishment of OSMA PAC.**

**Any penalty assessed against OSMA PAC should be mitigated because (1) all contributions made by OSMA PAC were timely reported to either the FEC or to the Oklahoma Ethics Commission; (2) the voting public had an opportunity to view all contributions to candidates prior to any election at which the recipients were candidates; (3) OSMA PAC discovered and reported its own errors; (4) there is no likelihood of a continuing violation, because as a term of settlement OSMA PAC plans to dissolve at the conclusion of this matter and reconstitute itself as a state political action committee under Rules of the Oklahoma Ethics Commission.**

#### Stipulated Facts

Generally, OSMA PAC does not disagree with the relevant information contained in the Reports Analysis Referral to the Office of General Counsel of the FEC on October 23, 2007.

OSMA PAC's 2003 Mid-Year Report covering the period of January 1, 2003 through June 30, 2003, and subsequent amended reports for the same time period were erroneous.

OSMA PAC's 2004 October Quarterly Reports covering the period of July 1, 2004 through September 30, 2004, and subsequent amended reports for the same time period were erroneous.

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OSMA PAC's 2006 October Quarterly Report covering the period of July 1, 2006 through September 30, 2006, and subsequent amended reports for the same time period were erroneous.

On April 25, 2007, OSMA PAC filed amended reports that correctly reported the PAC's activities for the three time periods indicated above.

Although contributions to Oklahoma state committees and candidates were omitted from the erroneous FEC reports, all those contributions were timely reported to the Oklahoma Ethics Commission, as required by state and federal law.

**Terms**

As a condition of settlement, OSMA PAC agrees to dissolve at the conclusion of this case.

**Background**

At the time of its formation, the founders of the PAC anticipated making contributions to both federal candidates and candidates for Oklahoma state offices and therefore created a federal PAC. That practice did not develop, however. Over time, the only federal activity by OSMA PAC was an upstream transfer of funds to the American Medical Association PAC, which made individual contributions to federal candidates. OSMA PAC did not make individual contributions to any federal candidates, but did make many individual contributions to candidates for Oklahoma state offices.

Evidently, the required reports to the FEC were correctly filed until 2003.

As a matter of procedure, a staff employee of the Oklahoma State Medical Association prepared the reports for approval by the PAC Treasurer. Prior to filing the 2003 reports, there were two changes in the staff position responsible for this work. Apparently, all the necessary information on preparing the reports was not communicated correctly during this transition period.

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As a consequence, OSMA PAC failed to show contributions to candidates for Oklahoma state offices on reports filed in 2003, 2004 and 2006. Transfers to the American Medical Association PAC were correctly reported, even during this time period. As one consequence of these reporting errors, the OSMA account balance was vastly overstated in its reports to the FEC.

The reporting errors were discovered in 2006 during a routine internal audit conducted periodically by OSMA. Upon discovery, the OSMA PAC's Assistant Treasurer contacted the FEC to report the errors and request instructions on correcting them.

Due to a miscommunication, OSMA PAC attempted to remedy the errors by filing a single corrected report showing a lump sum transfer of funds covering contributions to candidates for Oklahoma state offices.

After being advised otherwise, OSMA PAC on April 25, 2007, filed amended reports for 2003, 2004 and 2006 to correct the errors.

During all relevant times, reports were timely filed with the Oklahoma State Ethics Commission showing contributions by OSMA PAC to candidates for Oklahoma state offices, as required by Rules of the Oklahoma Ethics Commission.

**Mitigating Circumstances**

OSMA offers the following in mitigation of its actions:

1. At no relevant time did OSMA PAC fail to report contributions to federal committees as required by the FEC. As a consequence, the voting public was neither misled nor disadvantaged by the erroneous reports with respect to federal candidates or committees.
2. At no relevant time did OSMA PAC fail to report contributions to state committees and candidates for Oklahoma state offices as required by Rules of the Oklahoma Ethics Commission. As a consequence, the voting public in Oklahoma was neither misled nor

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disadvantaged by the erroneous reports with respect to state committees or candidates for state offices.

3. All contributions to federal and state candidates were timely made available to the public in all cases, thus satisfying the disclosure purposes of both federal and state disclosure laws.
4. The errors by OSMA PAC were discovered during an OSMA internal audit and were self-reported to the FEC.
5. As soon as the errors were discovered, OSMA PAC took steps to correct the errors. The errors were *de minimis*, and severe punishment may discourage self reporting or errors by others in the future.
6. OSMA PAC directors have authorized the dissolution of OSMA PAC at the conclusion of this matter. OSMA PAC will be reorganized as a political action committee for the State of Oklahoma, subject to the Oklahoma Ethics Commission and will continue to make periodic transfers to the American Medical Association PAC, which will report those transfers. As a result of that decision, there is no likelihood of a continuing problem for the FEC.

For the foregoing reasons, OSMA PAC respectfully requests that the FEC forego any monetary penalties against OSMA PAC. In the alternative, OSMA PAC respectfully requests that any monetary penalties be substantially reduced consistent with the absence of malice and the prospective dissolution of OSMA PAC as a federal committee.

Respectfully submitted,



LEE SLATER

Attorney for  
Oklahoma State Medical  
Association PAC

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