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SANDLER, REIFF, YOUNG & LAMB, P.C.

OFFICE OF GENERAL COUNSEL

February 18, 2014

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

PRE-MUR # 571

Re: *Sua Sponte* Submission by Proliance Surgeons, Inc., Proliance Surgeons PAC, and Philip Lloyd, as treasurer

Dear Sir or Madam,

Pursuant to the Federal Election Commission's Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16695 et seq., April 5, 2007, Proliance Surgeons, Inc., Proliance Surgeons PAC, and Philip Lloyd, in his official capacity as treasurer admit to violations of the Federal Election Laws administered by the Commission as described in more detail below.

RESPONDENTS

Proliance Surgeons, Inc. ("PS") was formed in a merger in 2002. It is now one of the largest surgical practices in the country, with 185 physicians and 80 allied health professionals specializing in Orthopedics, Ear, Nose & Throat, Ophthalmology and General Surgery in over 40 offices throughout Washington. It is headquartered at 805 Madison St., Suite 901, Seattle, Washington, 98104. Relevant to this matter, Proliance Surgeons, Inc. has its own internal payroll and accounts payable departments.

Proliance Surgeons PAC ("PAC") was formed in May 2013 and has been entirely funded by contributions by PS physicians and its officers. They authorized PS to make payroll deductions for the purpose of making contributions to the PAC. The PAC's address is P.O. Box 2212, Seattle, Washington 98111.

Philip Lloyd, as treasurer, is the treasurer of the PAC and has been since its inception in May 2013. He is the owner of Project Accounting, which is an accounting firm specializing in non-profits and, in particular, political organizations. He can be reached at the PAC's address.

BACKGROUND

Contributions to the PAC were calculated either bi-weekly or monthly by the PS's payroll department and forwarded by the accounts payable department. See Attachment 1 (checks¹ and chart listing the contributor, the current contribution and the year-to-date total

¹ Copies of the checks include bank account information, and therefore, should not be made public.

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contribution). Twice a month, the PS payroll department calculated the amount of the individual contributions and prepared a spread sheet listing each contributor and the amount of the individual's contribution. The accounts payable department then submitted a single check for the aggregate amount of the contributions to the PAC. The individual contributions described on the spread sheet were imported into the PAC's campaign reporting software. The spread sheet's last two columns were the current contribution and the total year-to-date contributions for each contributor, respectively. At the bottom of each column was a total for the current and year-to-date contributions. Unfortunately, each pay period, due to an apparent misreading of the payroll contribution report, the accounts payable department inadvertently wrote a single check for the total year-to-date contributions instead of the current payroll contribution. As a result, from May 2013 through the end of the year, 16 checks totaling \$215,235 were remitted for payroll deduction contributions, instead of \$37,265 that were actually contributed by the restricted class of PS. Thus, the PAC received \$177,970.00 more than it should have from PS.

Distributions by the PAC in 2013 were only for administrative expenses, \$10,000 for contributions to federal candidates committees, and \$25,000 to the non-federal committee of the American Association of Orthopedic Surgeons. During January and February, immediately after the PAC discovered the error, it refunded all of the excessive contributions as soon as funds were available.

Filings by the PAC for mid-year 2013 and end-of-year 2013 were incorrect when they incorrectly reported the excessive distributions of \$3,665 and \$177,970, respectively. On February 12, 2014, the PAC amended both its 2013 mid-year and year-end reports to accurately describe the individual contributions (which were incorrectly reported based upon each year-to-date amount instead of the amount per period) and the excessive distribution by PS as other receipts. The amended year-end report listed a debt owed to PS for the excessive distribution and also noted the refund of all but \$2,000 of the excessive distribution was completed by February 7, 2014.

An investigation by the PAC was initiated late in January 2014 immediately after the discovery of this error while preparing the 2013 year-end report. At that time, it discovered that the PS accounts payable department had provided more contributions than authorized by its members as described above. See Attachment 2 (Results of Internal Investigation).

Corrective action was immediately taken. Experienced campaign finance counsel was consulted. The PAC completed the refunds of all but \$2,000 of the unauthorized funds by February 7, 2014 and filed amended mid-year and end-of-year reports on February 12, 2014. The remaining \$2,000 will be refunded as soon as the PAC has those funds, which are expected in March. To prevent a recurrence of this problem, the following actions were taken: 1) The PS payroll department changed the format of the report it generates to eliminate the total year-to-date contributions. Thus, only one number – the correct number – appears on the form used to write checks to the PAC; 2) The payroll and accounts payable departments have received additional training on the correct procedure for submitting contribution checks to the PAC; 3) Communication between the payroll department and the accounting firm engaged by the PAC has been enhanced; and 4) the PAC's accounting firm has designated a staff person experienced in campaign finance requirements to review each PS payroll bi-weekly submission of checks and contributor spread sheets.

DISCUSSION

The contribution and filing errors were caused by a simple inadvertent error by an inexperienced person in PS's accounts payable department who picked the wrong column from a spread sheet for the amount of the check that was submitted to the PAC. The list of contributors on the spread sheet prepared by the payroll department was automatically imported into the PAC's campaign finance reporting software and thus, the error went undetected. Although the PAC's accounting firm routinely reconciled the PAC's financial records with its bank statements, it admits it was remiss in not also reconciling its receipts with the spreadsheet listing the individual contributions. Thus, PS admits it made excessive distributions to the PAC. The PAC admits it accepted PS's excessive distributions, failed to timely discover that the contributions were illegal and, consequently, failed to immediately refund the excessive distributions. Furthermore, the PAC admits it failed to properly disclose the excessive distributions.

- A. We believe the Commission should exercise its discretion and dismiss this matter for the following reasons:

PS's error was caused by an inexperienced person in its accounts payable department who picked the wrong column in a spread sheet. The PAC imported the information about the individual contributors from the spread sheet into its report software without manually comparing those individual contributions to the single check representing the total amount of the contributions.

A routine review prior to submitting the PAC's year-end report discovered a discrepancy, which immediately caused the PAC's accounting firm to initiate an internal investigation. The investigation was concluded expeditiously and discovered the excessive distributions as well as the cause of the excessive distributions. Within days of filing the inaccurate year-end report, virtually all of the excessive distributions were refunded, and internal procedures were changed at PS and the PAC to prevent future violations. Experienced campaign finance counsel was consulted and the mid-year and end-of-year reports were amended on February 12, 2014, only seven business days later. Although the mid-year report incorrectly reported only \$3,665, and the end-of-year report was corrected within 7 business days, clearly, there was no intent to violate the campaign finance laws.

Moreover, no illegal funds were used in any federal election. Since inception, the PAC has only contributed \$10,000 to federal candidate committees, which was well within the legal \$37,265 of contributions it accepted from PS's physicians and officers. Its only other disbursements were for administrative expenses and a \$25,000 contribution to the non-federal committee of the American Association of Orthopedic Surgeons (which was the last disbursement made by the committee prior to the discovery of the error). Accordingly, the excessive funds did not have any impact on federal elections.

- B. The Commission ultimately dismissed similar *sua sponte* submission cases as described below:

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In ADR 442, a corporation and its connected committee reported errors in its payroll deduction system over 13 years due to multiple causes. As a reason for dismissing the matter, the Commission noted that the corporation and its committee made internal procedural changes and intended to outsource its reporting obligations. See ADR 442 Notification Letter. In contrast, PS's payroll errors were discovered in 7 months. All of the illegal funds were refunded, and the year-end report was amended in 7 business days. The PAC used and continues to use an experienced and specialized accounting firm. Thus, the errors here were discovered and remedied in a more timely fashion than the situation in ADR 442.

In ADR 439, a trade association and its connected committee mistakenly reported administrative expenses for 5 years. As a reason for dismissing the matter, the Commission noted that the committee amended its reports, and the amended reports did not reflect any previously undisclosed financial activity. In addition, the committee conducted an investigation and assigned a financial analyst with campaign finance experience to reconcile its financial records with its Commission reports. See ADR 439 Notification Letter. Here, the violation was for a much shorter period, and the PAC amended its reports in a timelier manner. The PAC has engaged an experienced firm to prepare and file its Commission reports and the firm has assigned staff experienced in campaign finance to manually compare the spread sheet listing the individual contributions with the amount of funds received by the PAC. Also, similar to the situation in ADR 439, the PAC's amended reports did not show any change in disbursements, except to note the refund of the excessive distributions by February 7, 2014.

In ADR 509, a corporation and its connected committee reported errors it discovered following a 5 year reconciliation of its bank accounts with the reports it filed with the Commission. The Commission dismissed this matter because "following the discovery of the errors, Respondents filed amended reports to disclose the errors and omissions which corrected the record, and took significant steps to revise and strengthen their financial procedures." ADR 509 Notification Letter. Similarly, PS and the PAC discovered violations that occurred over only 7 months, immediately filed amended reports, and instituted procedural changes to prevent future violations.

Here, PS's and the PAC's violations occurred over a shorter period than the violations in the dismissed ADRs. PS and the PAC took remedial actions to amend reports, remedy the violations and institute revised procedures at least as quickly and effectively as in those ADRs. Like the dismissed ADRs there was no change in the reported distributions, and in this matter, there was no impact on any federal election. Accordingly, like those ADRs, the Commission should dismiss this matter.

CONCLUSION

In sum, PS and the PAC have admitted the errors which lead to inadvertent violations of the Federal Election Campaign Act. The violations were an inadvertent mistake by an inexperienced person in PS's accounts payable department and were not prevented by the PAC because its system, at that time, imported individual contribution data directly from the payroll department's spread sheet (and only reconciled the total amounts received with its bank account). The violation was discovered after only 7 months and there was no impact on federal elections.

The PAC conducted an internal investigation, refunded the illegal receipts, amended its Commission reports, consulted counsel and made internal changes to its system to prevent future violations – all within a few weeks of discovering the problem. PS and the PAC are committed to cooperating with the Commission, have attached to this filing copies of the documents submitted by the PS payroll division to the PAC and the results of the PAC's investigation, and will provide any additional information requested. Accordingly, we request that the Commission discuss this matter.

Sincerely,



Neil Reiff
Stephen Hershkowitz
Counsel to Proliance Sugeons PAC and Phil
Lloyd, in his official capacity as Treasurer
and Proliance Surgeons, Inc.

Attachments:

- 1) Documentation of checks and spreadsheets regarding remittal of payroll deductions
- 2) Results of Internal Investigation
- 3) Designation of Counsel

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FEDERAL ELECTION COMMISSION
 999 E Street, NW
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
 Please use *one* form for each Respondent/Entity/Treasurer
 FAX (202) 219-3923

MUR # _____

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

2/14/14
 Date

[Signature]
 Respondent/Agent - Signature

Treasurer
 Title (Treasurer/Candidate/Owner)

RESPONDENT: Proliance Surgeons Inc.
 (Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: 805 Maidson, Suite 901
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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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