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July 15, 1994

MEMORANDUM TO: The Commission

THROUGH: John C. Surina 
Staff Director

FROM: Lawrence M. Noble 
General Counsel

N. Bradley Litchfield 
Associate General Counsel

Jonathan M. Levin 
Senior Attorney

SUBJECT: Draft AO 1994-19

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 21, 1994.

Attachment

SUBMITTED LATE
AGENDA ITEM
For Meeting of: JUL 21 1994

DRAFT

ADVISORY OPINION 1994-19

Andrew W. Cohen
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407

Dear Mr. Cohen:

This responds to your letter dated June 6, 1994, on behalf of the American Society of Anesthesiologists, Inc. ("ASA"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the affiliation of ASA's separate segregated fund and the political committees of state component societies.

ASA, a national medical society, is a not-for-profit membership organization incorporated under the laws of New York and tax-exempt under 26 U.S.C. §501(c)(6). The membership consists of 30,000 anesthesiologists, other physicians, and scientists who engage in or are interested in anesthesiology. According to ASA'S Bylaws, the organization's purpose is "to associate and affiliate into one organization" all reputable physicians in the U.S. practicing or otherwise interested in anesthesiology, to encourage specialization in the field, to raise the specialty's standards through fostering education and research and recommending standards, to issue publications, "to safeguard the professional interest of its members," etc. Bylaws, Section 1.00.

In general, no individual may be a member of ASA unless

he or she is first a member of one of the 48 state component societies chartered by the ASA Board of Directors. To be chartered, a component society must incorporate and agree to abide by the ASA's aims, principles, and purposes and its Guidelines for the Ethical Practice of Anesthesiology.

The component societies of North Carolina and Florida (i.e., the North Carolina Society of Anesthesiologists and the Florida Society of Anesthesiologists) have maintained separate segregated funds since 1987 and 1988 respectively. ASA established an SSF, ASA-PAC, in 1991. You ask whether ASA-PAC and the SSFs of the state component societies are affiliated, thus subjecting the contributions made and received by the three PACs to the limits for a single political committee.^{1/} 2 U.S.C. §441a(a)(5); 11 CFR 110.3(a)(1).

The response to your question may be approached in two ways, i.e., (i) by treating the ASA as a trade association and (ii) by treating the ASA as a federation of trade associations. Organizations may be classified under both categories at the same time, i.e., as a trade association consisting of individual members or business entities, and as

^{1/} In Advisory Opinion 1988-43, the Commission concluded that ASA would incur no reporting or registration requirements as a result of the establishment of political committees by the two component societies. The Commission declined to address the issues of affiliation with respect to the state society funds and any fund of ASA because the two state societies had not joined in the request and because ASA had not yet formed an SSF. The North Carolina and Florida state component societies are joining in this request.

3 a federation consisting of state or regional associations
4 made up of those persons or entities (and perhaps other
5 persons or entities who may be members of the state entity,
6 but not the national organization). See Advisory Opinion
7 1977-44. See Re: AOR 1976-63.

8 A trade association is generally a membership
9 organization of persons engaging in a similar or related line
10 of commerce, organized to promote and improve business
11 conditions in that line of commerce and not to engage in a
12 regular business of a kind ordinarily carried on for profit,
13 and no part of the net earnings of which inures to the
14 benefit of any member. 11 CFR 114.8(a). Commission
15 regulations describe as affiliated committees those that are
16 established, financed, maintained or controlled by a
17 membership organization, including a trade or professional
18 association and/or related state and local entities of that
19 organization. 11 CFR 110.3(a)(2)(iv). Committees listed or
20 described in this regulation are among those viewed as per se
21 affiliated. Explanation and Justification, Federal Election
22 Commission Regulations, 54 Fed. Reg. 34099 (August 17, 1989).

23 In consideration of the make-up of ASA's membership, its
24 purposes, and its tax status, ASA falls within the category
25 of trade association.^{2/} The state societies are characterized
26 by the Bylaws as state component societies chartered by ASA,
27

28 2/ The Explanation and Justification to 11 CFR 114.8(a)
29 states that the definition is based on the Federal tax code's
30 treatment of business associations and cites to 26 U.S.C.
§501(c)(6). House Document No. 95-44, at 112 (1977).

3
4 not as members of the society. ASA is a membership
5 organization of individual physicians and scientists, a
6 predominant percentage of whose membership is derived from
7 their membership in the state component societies; the state
8 component societies are the state entities of the ASA. See
9 Bylaws, Title III. Compare Advisory Opinion 1988-3. As
10 such, they are affiliates of ASA and the separate segregated
11 funds of the state component societies are affiliated with
12 ASA-PAC and with each other.

13 ASA also comes under the category of federation of trade
14 associations. A federation of trade associations is an
15 organization representing trade associations involved in the
16 same or allied lines of commerce. 11 CFR 114.8(g)(1). ASA
17 is made up of state component societies that have their own
18 governance mechanisms, while still participating as units in
19 the governance of the national body and bound as units by the
20 rules of that body, e.g., rules directing the societies'
21 governance structure. See Advisory Opinion 1977-44.

22 Although the state entities of a trade association are
23 per se affiliated, Commission regulations indicate that a
24 federation's state "affiliates" must satisfy sufficient
25 indicia of affiliation in order for their committees to be
26 considered affiliated under the Act. Commission regulations
27 at 114.8(g)(1) state:

28 Such a federation may, subject to the following
29 limitations, solicit the members of the
30 federation's regional, State, or local affiliates
or members, provided that all of the political
committees established, financed, maintained, or
controlled by the federation and its regional,

4 State, or local affiliates are considered one
5 political committee for the purposes of the
6 [contribution] limitations. The factors set forth
7 at §100.5(g)(4) shall be used to determine whether
8 an entity is a regional, State, or local affiliate
9 of a federation of trade associations.

10 Commission regulations provide for the application of
11 various factors in the context of an overall relationship to
12 determine whether one organization or entity is an affiliate
13 of another and, hence, whether their respective SSFs are
14 affiliated with each other. 11 CFR 100.5(g)(4)(i) and
15 (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). The
16 relevant factors in the situation you have presented are as
17 follows: (B) the authority or ability of one sponsoring
18 organization to participate in the governance of another
19 sponsoring organization through provisions of constitutions,
20 by-laws, contracts or other rules, or through formal or
21 informal practices or procedures; (C) the authority or
22 ability to hire, appoint, demote or otherwise control the
23 officers or other decisionmaking employees or members of
24 another sponsoring organization; (D) common or overlapping
25 membership between sponsoring organizations indicating a
26 formal or overlapping relationship between the sponsoring
27 organizations; (E) common or overlapping officers or
28 employees, indicating a formal or ongoing relationship
29 between the sponsoring organizations; and (I) an active or
30 significant role by one sponsoring organization in the
formation of another. 11 CFR 110.3(a)(3)(ii)(B), (C), (D),
(E), and (I).

The most obvious factor connecting the component societies with ASA and indicating their ongoing relationship is the heavily overlapping membership. For the most part, one becomes a member of ASA by being a member of the state component society. See 11 CFR 110.3(a)(3)(ii)(D). In addition, to be a member of ASA's Board of Directors generally requires two years voting membership in a state component society, and to be an officer of a state society one must be in the category of "active member" of ASA. Bylaws, Sections 1.43 and 1.35. Under these circumstances, an overlap of officers is also likely. See 11 CFR110.3(a)(3)(ii)(E).

There are other factors, however, that go beyond the above circumstances. Most prominent is the fact that the state component societies are chartered by the ASA and the ASA Board and House of Delegates may revoke the charter. Bylaws, Sections 1.31 and 1.33. In applying for a charter as a state component society, an organization must submit a copy of its proposed articles of incorporation and Bylaws, a list of its officers and members, and a declaration of intent to comply with the Guidelines for Ethical Practice approved by the ASA. Bylaws, Section 1.32. The ASA Bylaws set out the categories of membership for a state society in detail, the requirements that each society's officers include at least a president and secretary (who must be "active members" of ASA), and the duties of the Secretary of each state society. Bylaws, Sections 1.34, 1.35, and 1.36. The chartering of an

3 organization is a vital element of its formation and
4 relationship to the charter-issuing body, and the ASA may
5 exert control to change the nature of the organization by
6 asking it to incorporate and to otherwise conduct its
7 operations as part of a national society. See 11 CFR
8 110.3(a)(3)(ii)(I). See, by analogy, Advisory Opinion
9 1990-22. Furthermore, the ASA's chartering ability, and
10 powers of revocation, and the membership and governance
11 requirements set out in the Bylaws indicate the presence of
12 factors (B) and (C).

13 Although state component societies have some degree of
14 autonomy, the presence of the factors discussed above
15 indicate that the ASA and the state component societies are
16 affiliates. See Advisory Opinions 1986-13 and 1983-46.
17 Their political committees are affiliated with each other,
18 and, thereby, share the limits on contributions made and
19 received. Correspondingly, however, transfers between the
20 committees will not be subject to those limits. 11 CFR
21 102.6(a)(1).

22 You also note that one member of the Board of Trustees
23 of ASA-PAC is also a member of the Board of Trustees of the
24 political committee maintained by Anesthesia Services Medical
25 Group ("ASMG"), a private professional corporation of
26 anesthesiologists based in San Diego, California. You state
27 that there is no formal relationship between ASMG and ASA,
28 although ASMG requires its anesthesiologists to be ASA
29 members. You ask whether ASA-PAC and ASMG-PAC are affiliated
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4 as a result of the overlap.

5 The Commission concludes that, without further
6 information, the overlap of one person on the boards of both
7 committees is not sufficient by itself to create affiliation
8 between the PACs. Compare Advisory Opinion 1994-9. (In that
9 situation, the Commission considered a corporation's overlap
10 of one director with each of its former parents to be
11 significant. That situation, however, involved a question of
12 disaffiliation, and other factors were also present.)

13 This response constitutes an advisory opinion concerning
14 application of the Act, or regulations prescribed by the
15 Commission, to the specific transaction or activity set forth
16 in your request. See 2 U.S.C. §437f.

17 For the Commission,

18 Trevor Potter
19 Chairman

20 Enclosure (AOs 1994-9, 1990-22, 1988-43, 1988-3, 1986-13,
21 1983-46, 1977-44 and Re: AOR 1976-63)
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