

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

MUR 5041

Wuesthoff Memorial Hospital, Inc.

CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission from Wuesthoff Memorial Hospital, Inc. ("Respondent Wuesthoff" or "Wuesthoff"). The Commission found reason to believe that Respondent Wuesthoff knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Respondent Wuesthoff is a nonprofit 295-bed acute care hospital incorporated in the State of Florida.
 2. At all relevant times, Robert Carman was President and Chief Executive Officer of Wuesthoff.

3. From November 21, 1995 through May 19, 1999, Terence Murphy was Senior Vice President and Chief Operating Officer of Wuesthoff.

4. From January 20, 1996 through May 19, 1999, Rebecca Colker was Chief Financial Officer of Wuesthoff.

5. For some period of time during 1991 through 1998, Josef Bogdan, Brian Collins, Chris Finton, Michael Pardy, Anthony Rose, Emily Rothenberger, Panella Simms, Bernard Van Someren, and Kathleen Weldon were employees of Wuesthoff.

6. In the 1980's, Wuesthoff was a member of the Association of Voluntary Hospitals of Florida (AVHF), to which it paid dues of approximately \$20,000 per year. In the late 1980's, Wuesthoff dropped out of the AVHF. In an interview with the Federal Election Commission, Robert Carman acknowledged that, as CEO and President of Wuesthoff, he determined that the money that would have gone to AVHF needed to be contributed directly to political candidates.

7. From at least November 1991 through at least June 1998, Robert Carman encouraged certain employees to make political contributions to various federal campaign committees. From at least November 1991 through at least December 1997, Carman indicated to certain employees that they would be reimbursed by Wuesthoff and caused these employees, along with himself, to be reimbursed by authorizing check requests submitted by employees. After December 1997, Carman caused Wuesthoff to grant bonuses to certain employees which Carman treated as lines of credit against which he would ask employees to make political contributions. All records of the bonus amounts

and contributions made by Wuesthoff employees were maintained by Carman and his support staff in Carman's executive offices.

8. Robert Carman caused himself and Wuesthoff employees to be reimbursed for federal campaign contributions totaling at least \$22,175 during the period November of 1991 through June of 1998. Listed below are the reimbursed contributions.

Employee	Date of Contribution	Amount	Recipient Committee
Robert Carman	11/11/91	\$250	Dixie Sansom For Congress Campaign Committee
Barbara Berard	6/26/92	\$250	Citizens for Bacchus 92
Barbara Berard	6/26/92	\$500	Dixie Sansom For Congress Campaign Committee
Terence Murphy	6/26/92	\$500	Dixie Sansom For Congress Campaign Committee
Anthony Rose	6/26/92	\$500	Dixie Sansom For Congress Campaign Committee
Robert Carman	6/26/92	\$750	Dixie Sansom For Congress Campaign Committee
Michael Pardy	6/29/92	\$500	Dixie Sansom For Congress Campaign Committee
Michael Pardy	7/2/92	\$100	Dixie Sansom For Congress Campaign Committee
Robert Carman	7/10/92	\$250	Citizens for Bacchus 92
Anthony Rose	7/31/92	\$100	Dixie Sansom For Congress Campaign Committee
Terrence Murphy	7/31/92	\$100	Dixie Sansom For Congress Campaign Committee
Anthony Rose	9/10/92	\$500	Citizens for Bacchus 92
Robert Carman	5/13/93	\$200	Dixie Sansom For Congress Campaign Committee
Barbara Berard	5/14/93	\$200	Dixie Sansom For Congress Campaign Committee
Terence Murphy	5/14/93	\$200	Dixie Sansom For Congress Campaign Committee
Michael Pardy	5/17/93	\$200	Dixie Sansom For Congress Campaign Committee
Robert Carman	3/21/94	\$1,000	Friends of Ed Stillie
Robert Carman	5/16/94	\$1,000	Sue Munsey For Congress

Panella Simms	9/19/94	\$100	Sue Munsey For Congress
Robert Carman	9/20/94	\$200	Sue Munsey For Congress
Robert Carman	11/29/95	\$250	Friends of Connie Mack
Robert Carman	3/11/96	\$1,000	Ben Graber For U.S. Congress
Terence Murphy	3/11/96	\$1,000	Ben Graber For U.S. Congress
Robert Carman	6/21/96	\$250	Friends of Bob Graham Committee
Robert Carman	9/9/96	\$250	Byron For Congress
Robert Carman	9/5/96	\$200	Friends of Dave Weldon
Terence Murphy	9/6/96	\$200	Friends of Dave Weldon
Robert Carman	10/13/97	\$625	Friends of Dave Weldon
Josef Bogdan	6/24/98	\$500	Republican Party of Florida
Rebecca Colker	6/24/98	\$500	Republican Party of Florida
Rebecca Colker	6/24/98	\$500	Republican Party of Florida
Brian Collins	6/24/98	\$500	Republican Party of Florida
Chris Finton	6/24/98	\$1,000	Republican Party of Florida
Chris Finton	6/24/98	\$1,000	Republican Party of Florida
Terence Murphy	6/24/98	\$5,000	Republican Party of Florida
Emily Rothenberger	6/24/98	\$500	Republican Party of Florida
Kathleen Weldon	6/24/98	\$500	Republican Party of Florida
Bernard Van Someren	6/24/98	\$1,000	Republican Party of Florida

9. Wuesthoff Board Member Thomas Philpot remembers that the Board of Directors instructed Robert Carman to become more politically active.

10. Wuesthoff Board Member and Chairman during 1997-1998, Lee Barnhart, was hired as a lobbyist for Wuesthoff during 1995 through 1999. Barnhart encouraged Wuesthoff employees to contribute to candidates and sometimes delivered contribution checks from Wuesthoff employees to candidates.

11. Lee Barnhart submitted to the Florida Elections Commission a signed affidavit denying that he was reimbursed for his political contributions. By contrast, in an interview of Robert Carman for the American College of Healthcare Executives on July 14, 1999, Carman stated that Barnhart was reimbursed for his political contributions.

Barnhart submitted to Carman for approval expense reports which included expenses for "Meetings/Conf" and "Contact/Dev." These items were in addition to separate expenses itemized for lodging, travel and meals, were in increments of as much as \$2,000 and \$3,000 per month, and are not supported by any documentation in Wuesthoff's possession. Barnhart's \$1,000 contribution to the Republican Party of Florida on June 24, 1998 was made on the same date as nine other contributions by Wuesthoff employees to the same committee, all nine of which were reimbursed.

12. As a senior officer at Wuesthoff, Terence Murphy caused himself to be reimbursed for some of his contributions by authorizing check requests in his own name. As a senior officer at Wuesthoff, Rebecca Colker appears as the authorizing signature on most reimbursement checks to Wuesthoff employees. Ms. Colker also informed Wuesthoff's administrative senior staff on December 10, 1997 that no political contributions could come from the hospital.

13. On June 16, 1998, a fundraiser for the Republican Party of Florida took place at Wuesthoff Board member Al Glover's home. Robert Carman, Terence Murphy, Al Glover, and Lee Barnhart served as chairpersons of this fundraiser. Carman, along with his Administrative Assistant Emily Rothenberger, helped to organize the event. Carman and Rothenberger solicited Wuesthoff employees for contributions to the Republican Party of Florida. Carman caused Wuesthoff employees to be reimbursed for \$11,000 in contributions by authorizing bonus payments for them to cover their contributions.

14. In an interview of Robert Carman for the American College of Healthcare Executives on July 14, 1999, Carman stated that during the time he authorized reimbursements for Wuesthoff employees' contributions, he was aware that it was illegal for a nonprofit corporation to provide a check for a political campaign.

15. Robert Carman has acknowledged that candidates were selected on the basis of whether they would benefit Wuesthoff.

16. The reimbursement of political contributions was never expressly authorized, approved or ratified by Wuesthoff's Board of Directors. In October of 1998, upon learning from a Wall Street Journal Article that a Miami businessman was indicted for reimbursing employees with corporate funds, Robert Carman informed Wuesthoff's general counsel of the reimbursement schemes. Robert Carman did not formally notify Wuesthoff's Board of Directors of the reimbursements until the Spring of 1999. Members of the Board of Directors expressed concern about the delay in reporting the matter to the Board.

17. The Board of Directors terminated Robert Carman, Rebecca Colker, and Terence Murphy for their participation in the political contribution reimbursement schemes.

18. Within four (4) days of Robert Carman's notification to the Board of Directors, Wuesthoff notified the Federal Election Commission of the potential violation. In addition to reporting the matter to the Commission, Wuesthoff cooperated with the Commission's investigation and took a number of corrective measures to ensure that this problem never occurs again. Wuesthoff adopted improved policies forbidding the

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making or reimbursement of political contributions by Wuesthoff and hired a full-time Chief Compliance Officer. Wuesthoff's Payroll Department, rather than the CEO, now handles the Executive Payroll and Wuesthoff no longer combines salary payments with other payments to employees. Wuesthoff also changed its employee orientation program to include a session on compliance and has instituted a 24 hour anonymous hotline for employees to report compliance issues.

19. The Act prohibits corporations from making contributions or expenditures in connection with any federal election. 2 U.S.C. § 441b(a). Section 441b(a) of the Act also prohibits any officer or any director of any corporation from consenting to any contribution or expenditure by the corporation.

20. Further, § 441f of the Act prohibits any person from making a contribution in the name of another person or from permitting his or her name to be used to effect such a contribution. The Commission regulations at 11 C.F.R. § 110.4(b)(1)(iii) also make it unlawful for any person to knowingly help or assist any person making a contribution in the name of another.

V. Respondent Wuesthoff Memorial Hospital, Inc., as a result of the actions of its former President and Chief Executive Officer, Robert Carman, violated 2 U.S.C. § 441b(a) and § 441f by reimbursing, at Carman's direction, Mr. Carman himself, Lee Barnhart,¹ Josef Bogdan, Rebecca Colker, Brian Collins, Chris Finton, Terence Murphy, Michael Pardy, Anthony Rose,

¹ There exist disputed facts regarding whether Lee Barnhart was reimbursed by Wuesthoff Memorial Hospital, Inc. for his personal political contributions as reflected in Paragraph IV(11). For the sole purpose of Wuesthoff's conciliation with the Federal Election Commission, Wuesthoff does not contest the Commission's inclusion of Lee Barnhart's name in Paragraph V.

Emily Rothenberger, Panella Simms, Bernard Van Someren, and Kathleen Weldon for their contributions to federal committees.

VI. Respondent Wuesthoff will pay a civil penalty to the Federal Election Commission in the amount of Thirty Two Thousand dollars (\$32,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. Respondent understands that the recipient campaign committees will be requested to disgorge the above-referenced reimbursed contributions to the United States Treasury. Respondent waives any and all claims it may have to the refund or reimbursement of such contributions.

XI. This conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner
Acting General Counsel

By: Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

2/21/01
Date

FOR RESPONDENT:

Emil P. Miller
Emil P. Miller
President/CEO
Wuesthoff Memorial Hospital, Inc.

2/1/01
Date

Date

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