



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

DEC 2 0 2007

**Joseph M Birkenstock, Esquire
Caplin & Drysdale
One Thomas Circle, NW
Washington, D C 20005**

RE MUR 5379
CarePlus Health Plans, Inc

Dear Mr Birkenstock

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, CarePlus Health Plans, Inc , may have violated the Federal Election Campaign Act of 1971, as amended (the "Act") On December 6, 2007, the Commission found reason to believe that CarePlus Health Plans, Inc violated 2 U S C § 441b(a), a provision of the Act Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination

In addition, please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U S C § 1519. In the meantime, this matter will remain confidential in accordance with 2 U S C §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that your client wishes the investigation to be made public.

Joseph M Birkenstock, Esq
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We look forward to your response

Sincerely,



Robert D Lenhard
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT CarePlus Health Plans, Inc

MUR 5379

I INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities See 2 U S C § 437g(a)(2)

II. BACKGROUND

CarePlus Health Plans, Inc ("CPHP") was, at all relevant times, a corporation organized under the laws of the State of Florida Miguel B Fernandez was, at all relevant times, Chairman and Chief Executive Officer of CPHP Fernandez was also President and Chief Executive Officer of CarePlus Medical Centers, Inc ("CPMC"), a corporation affiliated with CPHP In early 2003, Miami-Dade County Mayor Alex Penelas asked Fernandez for his help in raising funds for his campaign for the U S Senate Fernandez agreed to help and held a fundraiser for Mayor Penelas at his house on May 8, 2003

CPHP used corporate resources, including the services of Fernandez's executive assistant, Elizabeth Ricard, in connection with the May 8th fundraiser to facilitate contributions to the Penelas Committee However, neither Fernandez nor Ricard made advance reimbursements to CPHP for the fair market value of Ricard's services Specifically, Fernandez directed Ricard to engage in activities during working hours and to use company equipment and office supplies to help him with his fundraiser The event raised \$81,400 in contributions for the Penelas Committee The evidence also shows that CPHP used corporate funds to pay for catering

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services, in the amount of \$3,325.85, provided at Fernandez's fundraiser for Penelas, and that Fernandez consented to that expenditure.

III ANALYSIS

Under the Federal Election Act of 1971, as amended ("the Act"), corporations are prohibited from making contributions or expenditures in connection with any election for Federal office. 2 U.S.C. § 441b(a). The prohibition on corporate contributions and expenditures includes facilitating the making of contributions to candidates. 11 C.F.R. § 114.2(f)(1). The Commission's regulations define "facilitation" as "using corporate resources or facilities to engage in fundraising activities in connection with any federal election." *Id.*

Further, a corporation can only act through its agents, officers, and directors. *U.S. v. Wallach*, 935 F.2d 445, 462 (2d Cir. 1991). Under the Commission's regulations, corporate officials are prohibited from ordering or directing subordinates or support staff to plan, organize or carry out a fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A). Corporate employees may make occasional, isolated or incidental use of corporate facilities for their own individual volunteer activities in connection with a Federal election provided that such activity does not exceed one hour per week or four hours per month and the corporation is reimbursed for certain costs incurred by such activity. 11 C.F.R. § 114.9(a). Therefore, CPHP was prohibited from making contributions or expenditures to the Penelas campaign and as an officer of CPHP, Fernandez was prohibited from consenting to any contribution or expenditure by CPHP in connection with Penelas' campaign. 2 U.S.C. § 441b(a).

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1 In late February 2003, Fernandez directed Ricard to perform several tasks during working
2 hours, using company equipment and office supplies, in connection with a fundraiser Fernandez
3 was planning to hold for Mayor Penelas in April 2003. At Fernandez's direction, Ricard typed
4 and sent a memorandum from Fernandez to 10 CPMC and CPHP executives, vendors, and
5 family members soliciting campaign contributions for Mayor Penelas' campaign. In addition,
6 Ricard prepared the invitation for Fernandez's fundraiser, she prepared spreadsheets of the
7 contributions pledged and received, and she typed letters and address labels for the invitations to
8 Fernandez's fundraiser. Neither Ricard nor Fernandez reimbursed CPMC or CPHP for Ricard's
9 services or use of company equipment and office supplies.

10 Ricard performed all of the tasks discussed above during working hours. However,
11 neither CPMC nor CPHP received advance payment for the fair market value of Ricard's
12 services from Fernandez or the Penelas Committee. 11 C.F.R. § 114.2(f)(2)(i)(A). Further,
13 Ricard did not volunteer to work for Mayor Penelas' campaign, rather, Ricard performed the
14 fundraising tasks because Fernandez directed her to do so as his administrative assistant.
15 Although Ricard did not keep any records documenting the amount of time she spent on
16 fundraising, given the amount of work she did in connection with Fernandez's fundraiser, she
17 undoubtedly exceeded the four-hour per month limit for volunteer activity. See 11 C.F.R. §
18 114.9(a)(iii). For example, Ricard recalls spending a "few" hours just on the invitation to the
19 fundraiser and about three hours on several memoranda in connection with Fernandez's
20 fundraiser.

21 In addition, it appears that CPHP used corporate funds to pay for the catering services
22 provided at Fernandez's May 8th fundraiser for Mayor Penelas. CPHP sent one check to Pepe

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1 Luzarraga Catering Corp ("Pepe Luzarraga") in payment for the costs of both Fernandez's
2 May 8th fundraiser for Penelas and for a separate corporate event also held at Fernandez's home
3 Fernandez acknowledges that he saw the May 12, 2003 invoice from Pepe Luzarraga in the
4 amount of \$3,325 85 to CPHP and signed off on it, but claims that it was mistakenly sent to
5 CPHP's finance office along with the other invoice According to Fernandez, a different
6 procedure should have been followed for the invoice for his fundraiser Fernandez claims that he
7 first learned that CPHP paid for the catering services provided at his fundraiser more than a year
8 later After discovering that CPHP paid for those catering services, Fernandez, his wife, and his
9 son each reimbursed CPHP \$1,000 for their respective shares of the catering services and the
10 Penelas Committee reimbursed CPHP \$325 85 for the remainder ¹

11 **IV CONCLUSION**

12 Therefore, there is reason to believe that CarePlus Health Plans, Inc violated 2 U S C
13 § 441b(a) by facilitating the making of contributions to the Penelas Committee and by making an
14 expenditure of corporate funds in connection with Mayor Penelas' election to the U S Senate

¹ Because the fundraiser was held at Fernandez's home, which he shares with his wife and his son, Fernandez, his wife, and his son were each entitled to provide up to \$1,000 in food and beverages for the fundraiser See 11 C F R § 100 77