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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Pre-MUR: 445

DATE SUBMISSION RECEIVED: Feb. 1, 2007¹

DATE ACTIVATED: Mar. 13, 2007

EXPIRATION OF SOL: Sept. 26, 2005 – Mar. 6, 2011²

SOURCE: Critical Health Systems of North Carolina, P.C.
Critical Health Systems, Inc.

RESPONDENTS: Critical Health Systems of North Carolina, P.C.
Critical Health Systems, Inc.
Robert Alphin, M.D.
James Collawn, M.D.
Walter E. Daniel, M.D.
Michael Lish, M.D.
Robert E. Seymour, M.D.
Paul Woodard, M.D.

RELEVANT STATUTES 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d)
2 U.S.C. §§ 441b(a) and 441f

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

counsel for Critical Health Systems of North Carolina ("CHSNC") and Critical Health Systems, Inc. ("CHS") states that partner/shareholder and non-partner/non-shareholder physicians of CHSNC's Wake Practice Center made contributions totaling \$26,900 to various federal political and candidate committees from 1998-2006, some of

¹ We received supplemental submissions on April 9, May 2, May 30, May 31, and July 30, 2007.

² Penalties for potential violations totaling \$19,900 have been lost to the statute of limitations as they expired before the submission was received. The remaining \$7,000 in contributions are still fully viable, with the next expiration date occurring on June 19, 2008.

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1 which were then reimbursed by CHSNC through CHS. During mid-2006, officers of CHSNC
2 brought to the attention of counsel questions regarding compliance with the Federal Election
3 Campaign Act of 1971, as amended (the "Act"), and requested counsel commence an internal
4 investigation. That investigation led to the discovery of 36 political contributions to four federal
5 political committees by Wake Practice Center physicians spanning from 1998-2006, some of
6 which may have been reimbursed. Based on the information provided, we recommend the
7 Commission find reason to believe Critical Health Systems of North Carolina violated 2 U.S.C.
8 §§ 441b(a) and 441f; find reason to believe that Dr. Robert Alphin, Dr. James Collawn,
9 Dr. Walter E. Daniel, Dr. Michael Lish, Dr. Robert E. Seymour and Dr. Paul Woodard violated
10 2 U.S.C. § 441f; find reason to believe that Critical Health Systems, Inc. violated 11 C.F.R.
11 § 110.4(b)(iii);

12

13 **II. FACTUAL BACKGROUND**

14 Critical Health Systems of North Carolina, P.C. ("CHSNC") is a North Carolina
15 corporation, divided into two primary practice centers: the Wake Practice Center and the
16 Raleigh Practice Center.³ CHSNC has not contacted the political committees to inform them of
17 the impermissible contributions, and we have no information suggesting that the political
18 committees are aware that the received contributions were reimbursed.

19 Critical Health Systems, Inc. ("CHS") is a Delaware corporation that provides billing,
20 accounting and management services to CHSNC, among others. Since 1999, there have been
21 nine members of the CHS Board of Directors, three of whom at all relevant times have been

³ An investigation by counsel revealed no potential reimbursement by CHSNC to Raleigh Practice Center physicians.

1 Wake Practice Center physicians. In 2003, one of the five partner physicians who contributed
2 \$1000 to the Friends of Dave Weldon campaign was a CHS Board member at the time of the
3 contribution. In 2006, two of the four partner physicians who contributed \$500 each to the
4 Virginia Foxx for Congress campaign were also CHS Board members at the time of their
5 contributions.

6 The Wake Practice Center partner physicians of CHSNC share equally in the workload
7 and the income of their practice group. That is, each of the partner physicians is entitled to
8 receive and does receive each year an equal allocation of the income of that practice group. This
9 income is allocated in the form of monthly salary payments, monthly bonus payments, and
10 special and annual bonus payments.

11 In 1998 and 1999, Wake Practice Center physicians made federal political contributions,
12 but the internal investigation uncovered no records showing reimbursements coinciding with
13 these contributions.⁴ It was determined, however, that "special payments" were made in 2000,
14 2001, 2003 and 2006 from the Wake Practice Center's income as reimbursements to its partners
15 and non-partners who made contributions in those years. The timing of the special payments
16 roughly coincided with the contributions and, in most instances, the payments were double the
17 amount of the contributions. Counsel uncovered no additional contributions made by any Wake
18 Practice Center physicians, and our search of Commission databases confirmed this.⁵

19 Following counsel's investigation and analysis of contributions by the Wake Practice
20 Center physicians, the CHSNC Board requested that counsel prepare a policy governing political

⁴ Because any reimbursements in this period would be time-barred by the statute of limitations, we believe the most efficient use of Commission resources is not to investigate these contributions further to determine if any reimbursements were made during these two years.

⁵ According to the submission, in 2002, 2004, and 2005, no Wake Practice Center physicians made contributions to any Federal candidate or committee.

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1 contributions by CHSNC, which has been adopted by the CHSNC Board. Attachment 2. In
2 addition, CHSNC and CHS have expressed their willingness to cooperate fully with the
3 Commission in this matter by making all relevant documents available to the Commission and by
4 making its physicians available for interviews and/or depositions that may be requested by the
5 Commission. Indeed, additional questions posed by OGC regarding the underlying facts of this
6 matter were met with prompt responses. With its voluntary submissions, CHSNC and CHS have
7 provided the information needed for an efficient resolution of this case.

8 **III. ANALYSIS**

9 **A. CHSNC, the Wake Practice Center Physicians, and CHS, Inc.**

10 CHSNC appears to have violated 2 U.S.C. §§ 441b(a) and 441f by making impermissible
11 contributions in 2003 and 2006 in the names of others. Six partner/shareholder physicians of
12 CHSNC appear to have violated 2 U.S.C. § 441f by permitting their names to be used to effect
13 corporate political contributions. In addition, CHS' involvement in providing the special
14 payments at issue to the Wake Practice Center physicians appears to have violated 11 C.F.R.
15 § 110.4(b)(iii) by knowingly assisting in the making of contributions in the names of others.

16 The Act defines "contribution" as anything of value made by any person for the purpose
17 of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). Under the Act,
18 corporations are prohibited from making contributions or expenditures from their general
19 treasury funds in connection with any election of any candidate for federal office and corporate
20 officers are prohibited from consenting to such contributions. 2 U.S.C. § 441b(a). The Act also
21 provides that no person shall make a contribution in the name of another person or knowingly
22 permit his or her name to be used to effect such a contribution, and that no person shall
23 knowingly accept a contribution made by one person in the name of another person. 2 U.S.C.

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1 § 441f. Further, no person shall knowingly help or assist any person in making a contribution in
2 the name of another. 11 C.F.R. § 110.4(b)(iii).⁶

3 CHSNC acknowledges that the reimbursement of contributions made by non-partner
4 physicians in 2000 and 2001 may have been a violation of the Act. The special payments to the
5 non-partner physicians in 2000 and 2001 totaled \$14,000 for \$6,000 in contributions to federal
6 candidates. See Attachment 1, pp. 1-2. On the other hand, while there is no denial of
7 reimbursement to the partner physicians, CHSNC argues that the partner physicians' 2000 and
8 2001 contributions totaling \$13,900 and subsequent special payments totaling \$30,000 did not
9 violate the Act because all partner physicians received the same bonus amount, regardless of the
10 amount or even whether that partner made a contribution.⁷ While this may be true, the pattern of
11 the special payments to partner physicians appears to mirror the special payments made to the
12 non-partner physicians, which CHSNC admits were reimbursements for contributions.⁸
13 See Attachment 1, p. 2.

14 In 2003, partner physicians made contributions totaling \$5,000 that appear to have been
15 reimbursed by special payments. See Attachment 1, p. 3. In 2006, partner physicians made
16 contributions totaling \$2,000 that appear to have been reimbursed by special payments.

⁶ The Act also addresses violations of law that are knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15. We have uncovered no information indicating any attempt to conceal either the contributions or the special payments, nor any other activity that might be considered knowing and willful conduct in this matter.

⁷ As can be seen in Attachment 1, in the year 2000, Wake Practice Center partner Dr. Walter E. Daniel received the same \$1,000 special payment as the rest of the partner physicians, even though his contribution was \$100 less than the other contributors. Similarly, in the year 2001, Wake Practice Center partner Dr. Kassell Sykes received the same \$2,000 special payment as the rest of the partner physicians, even though he made no contribution.

⁸ All reimbursements made in 2000 and 2001 are beyond the applicable statute of limitations and are not included in our civil penalty calculation. See *infra*, fn. 12.

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1 See Attachment 1, pp. 4-5. CHSNC admits that special payments coincided with the
2 contributions made by partner physicians in 2006, but argues that no violation of the Act
3 occurred because the physicians have repaid these payments to the Wake Physician Center. On
4 the contrary, the fact that respondents have repaid the reimbursed contributions does not negate
5 the violation itself.⁹ Accordingly, we recommend that the Commission find reason to believe
6 Critical Health Systems of North Carolina violated 2 U.S.C. §§ 441b(a) and 441f by making
7 contributions in the names of others.

8 A total of six partner/shareholder physicians of CHSNC made contributions within the
9 statute of limitations that were reimbursed with the corporate funds of CHSNC through CHS.
10 Therefore, we also recommend that the Commission find reason to believe Robert Alphin, James
11 Collawn, Walter E. Daniel, Michael Lish, Robert E. Seymour and Paul Woodard violated
12 2 U.S.C. § 441f by permitting their names to be used to effect corporate political contributions.¹⁰

13 CHS assisted CHSNC in the apparent making of contributions in the name of others by
14 processing the reimbursement requests and issuing reimbursement checks to the conduits,
15 including at least one Wake Practice Center physician/shareholder who was also a CHS Board
16 member and apparently knew that CHS was being used for this purpose. Accordingly, because
17 11 C.F.R. § 110.4(b)(iii) prohibits the act of knowingly assisting the making of a contribution in

⁹ See e.g., MUR 5784, in which the Commission found reason to believe that Morton Grove Pharmaceuticals, Inc. and Brian A. Tambi violated 2 U.S.C. §§ 441b(a) and 441f for reimbursed contributions that had been repaid by the time of their *sua sponte* submission.

¹⁰ This matter can be distinguished from MUR 5849 (Bank of America) in which we did not pursue conduits in a corporate reimbursement scheme. In that case, the Commission decided to focus on the individual(s) running the reimbursement scheme instead of the conduits, who the Commission determined should be treated as witnesses. However, in the instant matter, there was no single facilitator or ringleader; all of the physicians were equal participants in the scheme. Our recommendation to find reason to believe as to the conduits in this matter is consistent with Commission action in recent cases involving reimbursed contributions. See MUR 5818 (Fieger), MUR 5765 (Crop Production Services), MUR 5366 (Edwards for President/Tab Turner).

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1 the name of others, we recommend that the Commission find reason to believe Critical Health
2 Systems, Inc. violated 11 C.F.R. § 110.4(b)(iii).

3 **B. Recipient Political Committees**

4 The two committees that received contributions from Wake Practice Center physicians
5 during 2003 and 2006 are, respectively, Friends of Dave Weldon and Virginia Foxx for
6 Congress. These committees have not been notified by CHSNC of their receipt of impermissible
7 contributions. Under the Act, no person, including a political committee or a candidate, may
8 knowingly accept or receive a corporate contribution. 2 U.S.C. § 441b(a). At this time, there is
9 no information that either of the political committees had any knowledge that the contributions
10 they received from the Wake Practice Center physicians were made with corporate funds.
11 Accordingly, we make no recommendation at this time regarding the recipient committees
12 Friends of Dave Weldon and Virginia Foxx for Congress.

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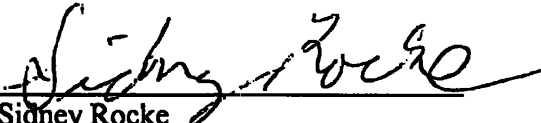
IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Critical Health Systems of North Carolina violated 2 U.S.C. §§ 441b(a) and 441f;
3. Find reason to believe that Critical Health Systems, Inc. violated 11 C.F.R. § 110.4(b)(iii);
4. Find reason to believe that Dr. Robert Alphin, Dr. James Collawn, Dr. Walter E. Daniel, Dr. Michael Lish, Dr. Robert E. Seymour and Dr. Paul Woodard violated 2 U.S.C. § 441f;
- 5.
- 6.
7. Approve the attached Factual and Legal Analysis;
8. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

10/17/07
Date

BY: 
Ann Marie Terzaken
Acting Associate General Counsel


Sidney Rocke
Assistant General Counsel

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April J. Sands
Attorney

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