FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 8 2007

Cynthia Wittmer, Esq.
Parker Poe Adams and Bernstein, L.L.P.
Wachovia Capitol Center
150 Fayetteville Street Mall
Suite 1400, Post Office Box 389
Raleigh, NC 27602-0389

RE: MUR 5948
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.

Dear Ms. Wittmer:

By letter dated January 31, 2007, you notified the Federal Election Commission (the "Commission") of the possibility of violations by your clients, 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., and Paul Woodard, M.D., of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 31, 2007, upon review of the information provided by your clients, the Commission found reason to believe that Critical Health Systems of North Carolina violated 2 U.S.C.§§ 441b(a) and 441f, Critical Health Care Systems, Inc., violated 11 C.F.R. § 110.4(b)(iii), and Dr. Robert Alphin, Dr. James Collawn, Dr. Walther E. Daniel, Dr. Michael Lish, Dr. Robert E. Seymour and Dr. Paul Woodard violated 2 U.S.C. § 441f, provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have 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 you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. [redacted]

If you are interested in engaging in pre-probable cause conciliation, please contact April Sands, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

Sincerely,

Robert D. Lenhard
Chairman

Enclosures
Factual and Legal Analysis
[redacted]
Procedures

cc: John R. Wallace, Esq.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 5948

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.

I. FACTUAL BACKGROUND

Critical Health Systems of North Carolina, P.C. ("CHSNC") is a North Carolina corporation, divided into two primary practice centers: the Wake Practice Center and the Raleigh Practice Center.[1] CHSNC has not contacted the political committees to inform them of the impermissible contributions, and we have no information suggesting that the political committees are aware that the received contributions were reimbursed.

Critical Health Systems, Inc. ("CHS") is a Delaware corporation that provides billing, accounting and management services to CHSNC, among others. Since 1999, there have been nine members of the CHS Board of Directors, three of whom at all relevant times have been Wake Practice Center physicians. In 2003, one of the five partner physicians who contributed $1000 to the Friends of Dave Weldon campaign was a CHS Board member at the time of the contribution. In 2006, two of the four partner physicians who contributed $500 each to the Virginia Foxx for Congress campaign were also CHS Board members at the time of their contributions.

[1] An investigation by counsel revealed no potential reimbursement by CHSNC to Raleigh Practice Center physicians.

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

In 1998 and 1999, Wake Practice Center physicians made federal political contributions, but the internal investigation uncovered no records showing reimbursements coinciding with these contributions. It was determined, however, that "special payments" were made in 2000, 2001, 2003 and 2006 from the Wake Practice Center's income as reimbursements to its partners and non-partners who made contributions in those years. The timing of the special payments roughly coincided with the contributions and, in most instances, the payments were double the amount of the contributions. Counsel uncovered no additional contributions made by any Wake Practice Center physicians, and our search of Commission databases confirmed this.[2]

Following counsel's investigation and analysis of contributions by the Wake Practice Center physicians, the CHSNC Board requested that counsel prepare a policy governing political contributions by CHSNC, which has been adopted by the CHSNC Board. In addition, CHSNC and CHS have expressed their willingness to cooperate fully with the Commission in this matter by making all relevant documents available to the Commission and by making its physicians available for interviews and/or depositions that may be requested by the Commission. Indeed, additional questions posed by OGC regarding the underlying facts of this matter were met with

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

prompt responses. With its voluntary submissions, CHSNC and CHS have provided the information needed for an efficient resolution of this case.

III. ANALYSIS

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

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

§ 441f. Further, no person shall knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii).[3]

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

In 2003, partner physicians made contributions totaling $5,000 that appear to have been reimbursed by special payments. In 2006, partner physicians made contributions totaling $2,000 that appear to have been reimbursed by special payments. CHSNC admits that special payments coincided with the contributions made by partner physicians in 2006, but argues that no violation of the Act occurred because the physicians have repaid these payments to the Wake Physician Center. On the contrary, the fact that respondents have repaid the reimbursed contributions does

[3] 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.

[4] 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.

not negate the violation itself.[5] Accordingly, the Commission finds reason to believe Critical Health Systems of North Carolina violated 2 U.S.C. §§ 441b(a) and 441f by making contributions in the names of others.

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

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

[5] *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.