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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6326  
DATE COMPLAINT FILED: 7/13/10  
DATE SUPPLEMENT FILED: 8/11/10  
DATE OF NOTIFICATION: 7/15/10  
LAST RESPONSE RECEIVED: 9/01/10  
DATE ACTIVATED: 9/16/10

STATUTE OF LIMITATIONS: 3/10/13-  
4/03/14

**COMPLAINANT:**

Timothy J. Bell

**RESPONDENTS:**

American Association of Physician  
Specialists, Inc.  
American Association of Physician  
Specialists, Inc. PAC and Stephen Montes,  
in his official capacity as treasurer  
William J. Carbone

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(b)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441b(b)(2)(C)  
11 C.F.R. § 114.1(a)(2)(iii)  
11 C.F.R. § 114.1(b)  
11 C.F.R. § 114.2  
11 C.F.R. § 114.5

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Complainant alleges that the American Association of Physician Specialists, Inc.

("AAPS"), a 501(c)(6) corporation, its separate segregated fund ("SSF"), the American

Association of Physician Specialists, Inc. PAC (the "Committee") and an AAPS

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1 executive violated the Federal Election Campaign Act of 1971, as amended ("the Act"),  
2 because AAPS made, at the executive's authorization, and the Committee accepted, a  
3 prohibited corporate contribution in the amount of \$20,000 in 2007 or 2008. *See*  
4 2 U.S.C. § 441b(a). Specifically, complainant alleges that AAPS's Chief Executive  
5 Officer ("CEO"), William J. Carbone, authorized Anthony Durante, AAPS's Director of  
6 Finance and Operations, to disburse \$20,000 from AAPS's general operating funds  
7 account to the Committee's bank account. Complaint at 2. Complainant also alleges that  
8 the Committee's treasurer knew about the \$20,000 deposit at the time it occurred.<sup>1</sup> *Id.*

9 In a joint response, Respondents assert that the complainant is a disgruntled  
10 employee terminated for poor job performance. *See* Response at 1 and Attached  
11 Affidavit of Linda Murphy. Respondents acknowledge, however, that AAPS transferred  
12 \$20,000 from its general operating account to the Committee's bank account in 2008.  
13 They assert that they transferred funds to the Committee's account to prevent check  
14 overage charges due to bookkeeping errors and mis-deposited funds. Response at 2.  
15 Respondents maintain that the majority of these funds remained in the Committee's bank  
16 account only temporarily, and that the Committee spent no corporate funds. Response  
17 at 3.

18 Based upon the complaint, the response, and other available information, we  
19 recommend that the Commission find reason to believe that AAPS made, and that the  
20 Committee accepted, a prohibited corporate contribution. *See* 2 U.S.C. § 441b(a).

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<sup>1</sup> Complainant, a former employee of AAPS, filed a supplement to the complaint that reaffirmed his original allegations and acknowledged that he did not timely input the Committee's contributor information into the PAC software, with the result that the Committee had to amend several of its 2009 disclosure reports in January 2010. *See* Supplemental Complaint.

1 Because section 441b(a) imposes liability for any officer or director of a corporation that  
2 consents to a contribution by a corporation, we further recommend that the Commission  
3 find reason to believe that William J. Carbone, the CEO of AAPS, violated 2 U.S.C.  
4 § 441b(a) by authorizing the transfer of funds. In addition, because the Committee did  
5 not disclose its receipt and disbursement of the funds at issue in its disclosure reports, we  
6 recommend that the Commission find reason to believe that the Committee violated  
7 2 U.S.C. § 434(b). 1

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10 **II. FACTUAL AND LEGAL ANALYSIS**

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12 **A. Factual Background**

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14 The complainant, a former Director of Governmental Affairs for AAPS, asserts  
15 that on January 28, 2010, while preparing the Committee's 2009 Year-End Report, he  
16 "discovered that the final numbers were several thousand dollars out of balance."  
17 Complaint at 1. Complainant states that he contacted Anthony Durante, AAPS's Director  
18 of Finance and Operations, who advised him that in 2007 or 2008, a former AAPS  
19 employee made several thousand dollars in campaign contributions with checks from the  
20 Committee's account without adequate funds to cover the amounts. *Id.* Complainant  
21 alleges that Mr. Durante advised him that AAPS's CEO, Williams J. Carbone, authorized  
22 Durante to disburse \$20,000 from AAPS's general fund bank account to the Committee's  
23 bank account. Complaint at 1-2. Complainant also alleges that on that same day he  
24 spoke with the Committee's treasurer, who advised the complainant that he knew of the  
25 disbursement at the time it occurred. Complaint at 2.

1           The response states that on April 2, 2008, AAPS transferred \$20,000 in general  
2   operating funds to the Committee's bank account. Response at 2 and 4. Respondents  
3   assert that they deposited the funds in the Committee's account as a precautionary  
4   measure to prevent checks from being returned for insufficient funds due to bookkeeping  
5   and mis-deposit errors, but that the Committee never used the funds, and transferred  
6   \$14,465 back to AAPS within thirteen days. *Id.* at 3-4.

7           Respondents provide the following context for the AAPS \$20,000 disbursement  
8   to the Committee. In February 2008, AAPS moved the Committee's account from Bank  
9   of America to SunTrust. Response at 1. AAPS opened a new PAC account with  
10   SunTrust, but kept the Committee's Bank of America account open for pending  
11   transactions within the same timeframe. Response at 2. Respondents also moved the  
12   account for AAPS's National Initiative Fund ("NIF") from Bank of America to  
13   SunTrust.<sup>2</sup> *Id.* Both Bank of America accounts were held open and the new accounts at  
14   SunTrust were issued temporary checks and deposit slips. *Id.* According to the response,  
15   in April 2008, Respondents discovered that AAPS's bookkeeper mistakenly deposited  
16   \$1,300 intended for the NIF account into the Committee's SunTrust PAC account on  
17   March 10 and 11, 2008. *Id.*

18           Although it is not clear why, Respondents state that the mis-deposit of \$1,300 of  
19   NIF's funds into the Committee's account could result in the Committee having checks  
20   returned for insufficient funds. *Id.* at 2. Therefore, AAPS "temporarily transferred"  
21   \$20,000 on April 2, 2008 from its general operating account to the new SunTrust PAC

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<sup>2</sup>       The Response provides no further information on the NIF. According to AAPS's website, NIF lobbies on behalf of AAPS before members of Congress, state legislatures, state and federal courts, state medical boards, insurance companies, and hospital systems. See <http://www.aapsus.org/National-Initiative-Fund-NIF>. NIF is not registered with the Commission.

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1 account. *Id.* On April 4, 2008, the Committee transferred the \$1,300 intended for NIF  
2 back to the NIF account. *Id.* Thereafter, on April 15, 2008, AAPS transferred \$14,465 of  
3 the \$20,000 from the Committee's account back to AAPS's general operating account.  
4 The remaining \$5,535, however, stayed in the Committee's account for almost another  
5 year, until the Committee transferred it back to AAPS on April 13, 2009. *Id.* at 2-3. The  
6 response asserts that the \$5,535 remained in the Committee's account in order to  
7 complete the bank account move from Bank of America to SunTrust, to resolve the initial  
8 issues that prompted the account move, to complete unrelated internal audits, and to  
9 complete a full audit of the Committee's account. *Id.* at 3. The response did not include  
10 a copy of any audit findings.

11 The Committee did not disclose any of the transactions described above.  
12 Specifically, the Committee did not disclose its receipt of \$1,300 in NIF funds or its  
13 \$1,300 disbursement of the funds to the NIF account. *See* Committee's Amended April  
14 2008 Quarterly and Amended July 2008 Quarterly Reports. In addition, the Committee  
15 did not disclose its receipt of \$20,000 from AAPS, the transfer of \$14,465 back to AAPS,  
16 the \$5,535 that remained in the Committee's account until April 2009, or the return of the  
17 \$5,535 to AAPS. *See* Committee Amended July 2008 Quarterly and Amended July 2009  
18 Quarterly Reports.

19 **B. Analysis**

20  
21 **1. Prohibited Corporate Contribution**

22 The Act prohibits corporations from making any contribution in connection with a  
23 Federal election, and prohibits political committees from knowingly accepting or  
24 receiving such contributions. 2 U.S.C. § 441b(a). This prohibition extends to  
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1 corporations using general treasury funds to make contributions to their SSFs. *Id.*; see  
2 also *Campaign Guide for Corporations and Labor Organizations* (2007), pg. 15.  
3 However, the Act provides an exception to the prohibition by excluding from the  
4 definition of the term "contribution" a corporation's payment of the costs incurred in the  
5 establishment, administration and solicitation of contributions to an SSF. 2 U.S.C.  
6 § 441b(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii). The Commission's regulations define the  
7 terms "establishment, administration, and solicitation costs" as the costs of office space,  
8 phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other  
9 expenses incurred in setting up and running an SSF established by a corporation.  
10 11 C.F.R. § 114.1(b). The connected organization may pay these costs directly or  
11 through a separate administrative account, but it cannot transfer corporate funds into its  
12 SSF's bank account. See 2 U.S.C. § 441b(b)(2)(C); see also 11 C.F.R. §§ 114.1(b) and  
13 114.5(b).

14 While acknowledging that AAPS transferred \$20,000 to the Committee from its  
15 corporate treasury funds, Respondents contend that because the funds were never used,  
16 the Respondents did not violate the Act. Response at 2-3. According to the response,  
17 \$14,465 of the original \$20,000 remained in the Committee's account for a short period,  
18 April 2, 2008 through April 15, 2008, and that during this time period, the Committee  
19 spent only \$718.95. *Id.* The Respondents contend that AAPS kept the remaining \$5,535  
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1 in the Committee's account until AAPS concluded the bank transfers and an audit. *Id.*  
2 at 3.<sup>3</sup> The response provides the Committee's cash-on-hand figures, as disclosed in its  
3 2008 July Quarterly Report through its 2009 July Quarterly Report, which range between  
4 \$36,373.98 and \$23,374.10, to show that the Committee did not spend the \$5,535 in  
5 corporate funds retained in the Committee's account before transferring it back to AAPS  
6 on April 13, 2009. *See id.*<sup>4</sup>

7 Even if AAPS was concerned that the Committee might have checks returned for  
8 insufficient funds, and regardless of the fact that the Committee's cash-on-hand exceeded  
9 the amount of the corporate funds provided by AAPS, AAPS could not make a corporate  
10 contribution to the Committee's bank account. *See* 2 U.S.C. § 441b(a). If checks were  
11 returned for insufficient funds, AAPS could have paid any bank charges directly or  
12 through a separate administrative account. *See* 11 C.F.R. §§ 114.1(b) and 114.5(b); *see*  
13 also Advisory Opinion 1981-19 (LAMPAC) (connected organization may establish a  
14 separate administrative account for SSF administrative and fundraising expenses). In the  
15 alternative, AAPS could have reimbursed the Committee for such charges, provided that  
16 the reimbursement was made within 30 days of the Committee's payment of the charges.  
17 *See* 11 C.F.R. § 114.5(b)(3).

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<sup>3</sup> The Committee's April 2008 Quarterly Report disclosed the receipt of "returned checks" totaling \$13,000 on January 31, 2008. The Reports Analysis Division ("RAD") sent an RFAI to the Committee on May 16, 2008, questioning these transactions. In a May 19, 2008 miscellaneous report, the Committee noted that these entries were incorrect and were actually "voided check[s]." The complainant alluded to a former AAPS employee who allegedly had written checks for several thousands of dollars from the Committee's account which the Committee could not cover. The response did not address this situation. It is unclear based on the available information whether the transactions alluded to by complainant or the RAD exchange with the Committee relate to AAPS's transfer of \$20,000 to the Committee's account.

<sup>4</sup> The response mistakenly labeled the Committee's 2009 April Quarterly and 2009 July Quarterly Reports as 2008 Reports. *See* Response at 3.

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1           Accordingly, we recommend that the Commission find reason to believe that the  
2   American Association of Physician Specialists, Inc. made, and that the American  
3   Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official  
4   capacity as treasurer, knowingly accepted, prohibited corporate contributions in violation  
5   of 2 U.S.C. § 441b(a).

6           The Act also prohibits any officer or director of a corporation from consenting to  
7   the making of corporate contributions. 2 U.S.C. § 441b(a). The response does not state  
8   who at AAPS authorized the transfer, leaving un rebutted complainant's allegation that  
9   AAPS's CEO, William J. Carbone, directed Anthony Durante, AAPS's Director of  
10   Finance and Operations, to make the transfer of \$20,000 in corporate funds to the  
11   Committee's account. Accordingly, based on the available information, it appears that  
12   Mr. Carbone, AAPS's CEO, consented to a prohibited corporation contribution.  
13   Therefore, we recommend that the Commission find reason to believe that William J.  
14   Carbone violated 2 U.S.C. § 441b(a).

15                   2.     Reporting

16           A political committee's disclosure reports must disclose all receipts and  
17   disbursements. See 2 U.S.C. § 434(b). Because the Committee did not disclose any of  
18   the transfers of corporate funds in and out of the Committee's account, we recommend  
19   that the Commission find reason to believe that the American Association of Physician  
20   Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, violated  
21   2 U.S.C. § 434(b).

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**IV. RECOMMENDATIONS**

1. Find reason to believe that American Association of Physician Specialists, Inc., American Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, and William J. Carbone violated 2 U.S.C. § 441b(a).
2. Find reason to believe that American Association of Physician Specialists, Inc. PAC and Stephen Montes, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
- 4.
- 5.

6. Approve the appropriate letters.

Christopher Hughey  
Acting General Counsel

December 13, 2010  
Date

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