

May 3, 2019

Federal Election Commission
Audit Division - Zuzana Pacious
1050 First Street, NE, Washington, DC 20002

Re: Ambulatory Surgery Center Association PAC DFAR Response

Dear Zuzana:

Please find attached a written response on behalf of the Ambulatory Surgery Center Association PAC (ASCAPAC) to the Federal Elections Commission's (FEC) April 15, 2019 Draft Final Audit Report (DFAR). Despite its disagreement with specific elements of the findings set forth in the DFAR, ASCAPAC will not be requesting a hearing before the Commission to present legal arguments concerning the draft report developed by the audit staff. Instead, ASCAPAC are submitting additional information that is responsive to the findings in the DFAR that the committee believes will help correct the record before the Commission. While ASCAPAC understands that the Commission is under no obligation to incorporate these additional facts into its final audit report, the committee would appreciate your consideration of the additional information.

In conjunction with this submission, ASCAPAC would also like clarity regarding the proper disgorgement protocol for the committee concerning any prohibited contributions discussed in the DFAR. Based upon our understanding of FEC regulations, as well our informal correspondence with the FEC audit team and information division, we believe that the disgorgement of funds to a qualified charitable organization is permissible under the Act and associated regulations. As appropriate, please confirm that disgorgement of certain donations to qualified 501(c)(3) entities is an appropriate remedy in response to this audit, or please specify that ASCAPAC is limited to disgorging the funds to the United States Treasury.

Feel free to reach out to Dentons US LLP with any questions.

Sincerely,

Dentons US LLP

A handwritten signature in black ink, appearing to read "Michael Zolanz", written in a cursive style. The signature is positioned above a thin vertical line.

Michael E. Zolanz

Enclosure



MAY 3, 2019

COMMITTEE RESPONSE TO DRAFT FINAL AUDIT REPORT

FINDING 1

During the audit process, ASCAPAC provided a detailed reconciliation report with background documents and filed the required amendments in March 2019. As documented, the misstatements were inadvertent deposits of non-PAC related receipts that ASCA did not realize were required to be reported if the transaction was corrected within the reporting period. Appendix A documents the \$2,500 transfer referenced in DFAR Finding 1, Section A, Footnote 3. ASCAPAC has updated its policies and procedures documents to ensure full compliance with the reporting of non-PAC receipts (Appendix B).

FINDING 2

In reviewing the Final Draft Audit Report, ASCAPAC realized that the supporting documentation provided to the auditors after the Initial Audit Report was incomplete. ASCAPAC is respectfully requesting that the Commission consider the new information and support provided below and as attachments.

ASCAPAC has continued research for documentation of permissibility for all contributions identified in this finding. The committee maintains that contributions totaling \$31,124 are from LLCs and LLPs that did not elect to file federal tax returns as a corporation (Table 1).

ASCAPAC believes that it is important to stress that the contributions were made and accepted in good faith, from eligible partnership entities that intended to make permissible contributions attributed to individual owners. When committee staff did its due diligence and asked each LLC contributor to send a list of ownership partners, the respondents at issue sent a list of all partners with ownership. In phone calls to several of these contributors, the respondents stated that they did not understand the request to attribute the contribution only to individual owners. This is not a standard way of dealing with financial transactions for these partnership entities – these contributors have no way to know the importance of the distinction and delineation that is specific to FEC regulations.

In hindsight, due to this audit, the committee realizes that the request for partnership information should have been more specific so that respondents could provide the required consent for allocation to individuals. We have updated our compliance policies and procedures as well as all solicitation disclosures to better inform potential contributors about the applicable FEC requirements associated with their contributions and prevent this situation in the future.

The following table contains the complete records for the following contributions that ASCAPAC maintains were received from eligible LLC partnerships with mixed ownership. Support for each contribution is attached in individual PDFs. A complete listing of all contributions and status is contained in Appendix C.

Table 1

4/23/15	Abington Surgical Center	\$ 750.00	Documentation shows 15 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
9/8/16	Abington Surgical Center	\$ 750.00	Documentation shows 15 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
2/11/15	Allied Physicians Surgery Center	\$ 1,000.00	Documentation shows 33 individual owners and allocation to whom the contribution is attributed entirely.
5/4/16	Allied Physicians Surgery Center	\$ 1,000.00	Documentation shows 33 individual owners and allocation to whom the contribution is attributed entirely.
10/28/15	Blake Woods Medical Park Surgery Center	\$ 199.00	Documentation shows 3 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
8/15/16	Carondelet St. Mary's Northwest, LLC	\$ 1,250.00	Documentation shows 24 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
5/19/16	Crow Valley Surgery Center	\$ 1,000.00	Documentation shows 17 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
11/25/15	CSS-JV, LLC	\$ 1,000.00	Documentation shows 12 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
4/7/16	CSS-JV, LLC	\$ 1,000.00	Documentation shows 12 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.

9/12/16	Eye Surgery Center of Michigan LLC	\$ 375.00	Documentation shows 9 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
4/22/16	Harmony Surgery Center, LLC	\$ 1,000.00	Documentation shows 17 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
8/16/16	Hunterdon Center for Surgery LLC	\$ 1,000.00	Documentation shows 22 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
7/13/15	Hunterdon Center for Surgery LLC	\$ 1,500.00	Documentation shows 22 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
8/15/16	Lippy Surgery Center LLC	\$ 500.00	Documentation shows 6 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
5/1/15	Loveland Surgery Center-David Ornelas	\$ 1,000.00	Documentation shows 8 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
10/14/16	New England Surgery Center LLC	\$ 250.00	New additional documentation shows 5 owners to whom the contribution is attributed entirely
5/25/15	New Gulf Coast Surgical Center	\$ 1,000.00	Documentation shows that the contributor intended to make a PAC contribution and approved reallocation from inadvertent mistake on check.
4/11/16	Northern WY Surgical Center	\$ 250.00	Documentation shows 13 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
2/18/16	PeakOne Surgery Center, LLC	\$ 1,000.00	Documentation shows 8 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
8/18/16	Physicians Outpatient Surgery Center, LLC	\$ 300.00	Documentation from tax filings show six individual owners to whom the contribution is attributed entirely. Documentation shows

			additional ownership entities to which the contribution is not attributed.
8/22/16	Post Street Surgery Center LLC	\$ 1,000.00	Documentation shows 4 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
2/12/16	Prince William Ambulatory Surgery Center Novant Health	\$ 250.00	Documentation shows 28 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
4/28/16	Prince William Ambulatory Surgery Center Novant Health	\$ 500.00	
11/6/15	Red Hills Surgical Center, LLC	\$ 1,000.00	Red Hills has confirmed that contribution should be attributed 38 physician owners. Red Hills is sending documentation which will be forwarded to the Commission.
5/3/16	Riverbend ASC LLC	\$ 750.00	Documentation shows 22 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
1/29/15	San Diego Sports and Minimally Invasive Surgery Center LLC	\$ 500.00	Documentation shows 7 individual owners and allocation to whom the contribution is attributed entirely. The respondent, a friend of committee staff, stated that the physicians did not know she was making the contribution on their behalf. Committee staff has confirmed that the physicians, similar to most respondents, did not understand that the contribution would be attributed to them as individuals, not that she made the contribution without their consent. Upon further explanation, each ownership partner approved the contribution.
2/17/16	San Diego Sports and Minimally Invasive Surgery Center LLC	\$ 500.00	
1/21/16	San Diego Sports and Minimally Invasive Surgery Center LLC	\$ 500.00	
10/29/15	Somerset Surgical Center, PA	\$ 500.00	Somerset has confirmed that contribution should be attributed to only physician owners. Somerset is sending documentation which will be forwarded to the Commission.
8/31/16	Somerset Surgical Center, PA	\$ 500.00	Somerset has confirmed that contribution should be attributed to only physician owners. Somerset is sending documentation which will be forwarded to the Commission.
5/14/15	Stephen Barainyak, Centennial Surgery Center	\$ 1,000.00	Documentation shows 28 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
5/29/15	Syracuse ASC Management LLC	\$ 2,500.00	The contribution for \$2,500 made on 5/29/15 was initially filed as coming from Syracuse ASC, LLC and deemed ineligible by the Audit Committee. ASCAPAC filed an amended report to include the full and proper name of the contributing

			organization as Syracuse ASC, LLC dba Specialty Surgery Center of CNY; the correction of the contributor name now matches a similar, allowable contribution made for \$2,500 on 6/3/16. The Audit Committee review deemed the 2016 as eligible, in agreement with ASCAPAC; to that end we believe the 2015 contribution should be as well.
4/13/16	The Center for Outpatient Medicine, LLC	\$ 500.00	Documentation shows 16 individual owners and allocation to whom the contribution is attributed entirely. Documentation shows additional ownership entities to which the contribution is not attributed.
1/5/15	Tri-Cities Surgery Center, LLC	\$ 5,000.00	Committee staff has obtained a list of 33 individual physician owners of Tri-Cities Physician Group LLC, which is listed in documentation as one of two owners of Tri-Cities Surgery Center LLC. The documentation allocates entire \$5,000 contribution to physician owners of TCPG LLC.

ASCAPAC refunded \$6,378¹ to contributors whose contribution was made from an incorporated entity in June 7, 2018 (Appendix D).

ASCAPAC refunded \$32,871² to contributors whose contributions were confirmed from the audit to be ineligible due to tax status in May 1, 2019 (Appendix E).

ASCAPAC refunded \$9,655 to contributors who did not respond to multiple attempts for documentation in May 2, 2019 (Appendix F). Three contributions, listed below, have been verified as eligible via phone. The donors are sending written confirmation. The committee will send the supporting documentation to the Commission as soon as received.

- Massachusetts Avenue Surgery Center, LLC - \$800.00
- Monterey Peninsula Surgery Center, LLC - \$2,500.00
- Surgical Center of Connecticut LLC - \$1,000.00

APPENDIX C - DFAR FINDING 2 LIST OF CONTRIBUTIONS

FEC accepted per DFAR	\$ 8,575.00
Table 1	\$ 31,124.00
Appendix D	\$ 6,378.00
Appendix E	\$ 32,871.00
Appendix F	\$ 9,655.00

¹ ASCAPAC and bank records show the Associates Surgery Centers, Inc's contribution as \$365. The FEC audit team documentation shows this contribution of \$385. We only refunded \$365 on June 7, 2018.

² ASCAPAC and bank records show the Andrews Institute ASC, LLC contribution of \$2575 on 11/5/15. The FEC audit team documentation shows this contribution of \$2675. We refunded \$2575 on May 1, 2019.

Written documentation in transit	\$ 4,300.00
FEC discrepancy 6/7/18 refund (footnote 1)	\$ 20.00
FEC discrepancy 5/1/19 refund (footnote 2)	\$ 100.00
	<u>\$ 93,023.00</u>

FINDINGS 3-5

ASCAPAC has continued an exhaustive search and contacted every contributor at issue in these findings. For the information that the committee was able to find, amendments correcting reports were filed in March 2019.

Throughout the audit, ASCAPAC has invested significant time and resources in updating our policies and procedures (Appendix B) as well as creating a new compliance and information-sharing systems (Appendix G) to ensure proper record keeping for receipts, disclosure of receipts and timely deposit of receipts pursuant to FEC rules and regulations. The committee is also engaged in an internal review of 2017 and 2018 contributions to ensure alignment and compliance for these years. In addition, on April 1, ASCAPAC contracted with Public Affairs Support Services to ensure the committee remains in full compliance with FEC requirements.

The lapses identified in the DFAR were inadvertent mistakes by committee staff in their good faith effort to ensure compliance with FEC requirements. Staff has since completed multiple compliance training professional development sessions and will complete additional compliance training at least once every year. The committee is confident that these steps will ensure that ASCAPAC is fully compliant with all contribution record keeping and record maintenance requirements under FEC rules and regulations going forward.

INDEX OF APPENDICES

Appendix A: Documentation of \$2500 transfer

Appendix B: Updated policies and procedures document

Appendix C: DFAR Finding 2 List of Contributions

Appendix D: Copies of cleared checks for June 2018 refunds

Appendix E: Copies of refund checks for ineligible contributions cut 5/1/19

Appendix F: Copies of refund checks for nonresponsive contributions cut 5/2/19

Appendix G: Compliance workflow processes (contribution eligibility, FEC report, RFAI)