



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

October 10, 2023

**Via Electronic Mail**  
[jrifis@foley.com](mailto:jrifis@foley.com)

Jared B. Rifis, Esq.  
Foley & Lardner LLP  
3000 K St NW,  
Washington, DC 20007

RE: MUR 8177 (formerly P-MUR 655)  
American Podiatric Medical  
Association Political Action  
Committee and Dr. William N.  
McCann in his official capacity as  
treasurer

Dear Mr. Rifis:

On April 15, 2022, your client, American Podiatric Medical Association Political Action Committee and Dr. William N. McCann in his official capacity as treasurer (the "Committee"), made a *sua sponte* submission notifying the Federal Election Commission (the "Commission") of the possibility that it may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). After reviewing the submission, on October 3, 2023, the Commission found reason to believe that your client violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R. § 104.3(a)(1) by failing to accurately report its cash on hand. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

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.

MUR 8177 (APMA PAC)  
Jared B. Rifis, Esq.  
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If your client is interested in engaging in pre-probable cause conciliation, please contact Crystal Liu, at (202) 694-1273 or [cliu@fec.gov](mailto:cliu@fec.gov), or Mark Shonkwiler, at (202) 694-1590 or [mshonkwiler@fec.gov](mailto:mshonkwiler@fec.gov), 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* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, 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.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

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. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Dara Lindenbaum  
Chair

Enclosures:

1. Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** American Podiatric Medical Association MUR 8177  
4 Political Action Committee and  
5 Dr. William N. McCann in his official  
6 capacity as treasurer

7 **I. INTRODUCTION**

8 This matter arises from a *sua sponte* submission from the American Podiatric Medical  
9 Association Political Action Committee and Dr. William N. McCann in his official capacity as  
10 treasurer (the “Committee” or “APMA PAC”) regarding a discrepancy between its actual cash  
11 on hand and what it reported on its FEC disclosure reports.<sup>1</sup> A review of the Committee’s  
12 financial statements prepared by its accounting firm and disclosure reports filed with the  
13 Commission reveals that APMA PAC misreported its cash on hand beginning from at least June  
14 16, 2004, through June 20, 2022, and that the discrepancy between its actual and reported cash  
15 on hand varied and grew to \$169,342 at its height. The Committee indicates that it did not detect  
16 these errors until August 2019 because it did not reconcile its disclosure reports with its bank  
17 records.<sup>2</sup> The Committee also represents that it waited until April 2022 to make the *sua sponte*  
18 submission because it was advised by counsel to investigate the causes of the discrepancy before  
19 making the submission.<sup>3</sup> APMA PAC did not provide any explanation as to why it continued to  
20 report an incorrect cash on hand until July 2022.

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<sup>1</sup> APMA PAC *Sua Sponte* Submission at 2-3 (Apr. 15, 2022).

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> See Email from Jared B. Rifis, Attorney, APMA PAC, to Crystal Liu, Attorney, FEC, June 27, 2022 (15:57 EST); APMA PAC FEC-Relevant Timeline at 1 (Sept. 8, 2022).

1 As described in further detail below, based on the Committee's *sua sponte* submissions  
2 and disclosure reports, the Commission opens a Matter Under Review and finds reason to  
3 believe that the Committee violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R. § 104.3(a)(1) by  
4 failing to accurately report its cash on hand.

## 5 **II. FACTUAL BACKGROUND**

6 APMA PAC is the separate segregated fund of the American Podiatric Medical  
7 Association, Inc.<sup>4</sup> Dr. William N. McCann is currently its treasurer.<sup>5</sup> In August 2019, when one  
8 of its officers compared its bank statement balance to the cash on hand reported on an FEC  
9 disclosure report, APMA PAC discovered that there was a discrepancy between the two values.<sup>6</sup>  
10 From February 2020 to April 2021, the Committee internally investigated the issue, and in the  
11 latter half of 2021, underwent an audit conducted by Dembo Jones, the accounting firm that  
12 prepares the Committee's annual financial statements.<sup>7</sup> In April 2022, the Committee made this  
13 *sua sponte* submission to the Commission.<sup>8</sup> The Committee represents that the delay in making  
14 the submission was due to its counsel advising it to complete an internal investigation of the  
15 cash-on-hand discrepancy before making the submission, its officers becoming seriously ill, and  
16 a change in counsel.<sup>9</sup> The Committee further represents that the internal investigation took

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<sup>4</sup> APMA PAC, Amended Statement of Organization at 2 (Nov. 3, 2020), <https://docquery.fec.gov/pdf/114/202011039336742114/202011039336742114.pdf>.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> APMA PAC *Sua Sponte* Submission at 2; APMA PAC FEC-Relevant Timeline at 1.

<sup>7</sup> APMA PAC FEC-Relevant Timeline at 1-2; APMA PAC *Sua Sponte* Submission at 3.

<sup>8</sup> *See generally* APMA PAC *Sua Sponte* Submission.

<sup>9</sup> Email from Jared B. Rifis, Attorney, APMA PAC, to Crystal Liu, Attorney, FEC, June 27, 2022 (15:57 EST); *see also* APMA PAC FEC-Relevant Timeline at 1.

1 longer than expected because of “access barriers to researching documentation” while working  
 2 remotely during the COVID-19 pandemic.<sup>10</sup>

3 Along with its initial *sua sponte* submission, APMA PAC submitted its annual financial  
 4 statements from fiscal year (“FY”) 04-05 through FY 21-22, which summarize its yearly  
 5 financial activity and appear to contain an accurate representation of the Committee’s cash on  
 6 hand each May 31st.<sup>11</sup> The below graph reflects the discrepancy between the cash on hand as  
 7 reported on APMA PAC’s disclosure reports and its financial statements each May 31st from  
 8 2004 to 2022:



9  
 10 As reflected above, the cash-on-hand discrepancy peaked at \$169,342 on May 31, 2020.

11 According to APMA PAC’s external audit, the cash-on-hand discrepancy increased from  
 12 \$89,401 on May 31, 2015, to \$169,342 on May 31, 2020 — an increase of \$79,941 during this

<sup>10</sup> APMA PAC FEC-Relevant Timeline at 1.

<sup>11</sup> See APMA PAC, Financial Statements from FY 04-05 through FY 21-22. The Committee states that it does not have earlier financial statements in its possession. APMA PAC *Sua Sponte* Submission at 3.

1 five-year period — because of (1) a 2015 unreported service agreement payment of \$55,262;  
2 (2) unreported credit card and bank fees of \$49,313, which were accumulated during this five-  
3 year period; (3) misreported political contributions resulting in an overreport of \$6,000 in  
4 disbursements; (4) differences between when a receipt was reported on an FEC disclosure report  
5 and when it was recorded on the Committee’s ledger, resulting in an overreport of \$11,650;  
6 (5) unreported investment activity of \$4,087, which were also accumulated during this five-year  
7 period; and (6) an unidentified difference of \$2,897.<sup>12</sup> APMA PAC represents that it has since  
8 implemented new internal controls, which include reconciling the activity disclosed on FEC  
9 reports with its bank statements and vice versa, and that in May 2020, its staff attended an FEC  
10 training on reporting requirements.<sup>13</sup>

11 Despite discovering the cash-on-hand discrepancy in August 2019, the Committee did not  
12 correctly report its cash on hand until July 20, 2022. Specifically, in June 2022, APMA PAC’s  
13 counsel spoke with the Office of General Counsel and indicated that the Committee’s disclosure  
14 reports continued to reflect an incorrect cash on hand. After conferring with the Office of  
15 General Counsel, the Committee subsequently filed a 2022 July Monthly Report correctly  
16 reporting its cash on hand as of June 30, 2022, and indicating that there was previously an

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<sup>12</sup> APMA PAC *Sua Sponte* Submission at 5-8.

<sup>13</sup> *Id.* at 3, 9-10; APMA PAC FEC-Relevant Timeline at 2 (stating that APMA PAC staff attended a virtual FEC training in May 2020).

1 overreport of \$168,288.<sup>14</sup> The Committee also filed an FEC Form 99 explaining the reasons for  
2 the discrepancy.<sup>15</sup>

3           When comparing the Committee’s annual financial statements to the disclosure reports  
4 covering the same periods, it also appears that APMA PAC made the following mistakes on its  
5 disclosure reports from FY 17-18 through FY 21-22:

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<sup>14</sup> See APMA PAC, 2022 July Monthly Report at 2, 18 (July 20, 2022), <https://docquery.fec.gov/pdf/599/202207209522241599/202207209522241599.pdf>.

<sup>15</sup> APMA PAC, FEC Form 99 (July 20, 2022), <https://docquery.fec.gov/pdf/073/202207209522243073/202207209522243073.pdf> (explaining that the Committee misreported its cash-on-hand due to “errors in reporting bank fees, investment activity, and administrative costs” and also a \$1,000 input error in the cash-on-hand amount in its 2020 Year-End Report).

<b>APMA PAC Reporting Errors</b>					
	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
<b>Receipts From Individuals</b>	Underreport of \$14,086 <sup>16</sup>	Overreport of \$711 <sup>17</sup>	Overreport of \$67 <sup>17</sup>	No Error	No Error
<b>Political Contributions</b>	Underreport of \$10,500 <sup>17</sup>	Underreport of \$1,999	Underreport of \$1 <sup>17</sup>	No Error	Underreport of \$2
<b>Credit Card or Bank Fees</b>	Unreported \$12,188	Unreported \$11,598	Underreport of \$4,528 <sup>18</sup>	Underreport of \$56	Underreport of \$4
<b>Investment Activity</b>	Unreported loss of \$139	Unreported gain of \$33	Unreported gain of \$10	N/A	Unreported gain of \$3
<b>Input Errors</b>	No Error	\$150 refund to contributor inputted as a negative disbursement	No Error	Mistaken input of \$1,000 <sup>19</sup>	No Error
<b>Change in COH Discrepancy From Prior Year</b>	Increase of \$8,741	Increase of \$14,575	Increase of \$4,586	Decrease of \$1,056	Increase of \$2 <sup>20</sup>

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<sup>16</sup> It is not known if this underreport of \$14,086 is encompassed by the timing differences described in the Committee's external audit report, which states that, from FY15-16 to FY17-18, there was a timing difference between when certain receipts were recorded on the FEC disclosure report and when they were recorded on the



### 1 III. LEGAL ANALYSIS

2 The Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission  
 3 regulations require committee treasurers to file reports of receipts and disbursements in  
 4 accordance with the provisions of 52 U.S.C. § 30104.<sup>21</sup> To comply with this requirement,  
 5 political committees must disclose the amount of cash on hand at the beginning of the reporting  
 6 period, and the total amount of receipts and disbursements for the reporting period.<sup>22</sup>

7 Here, the available information shows, and the Committee admits, that it misreported its  
 8 cash on hand from at least June 2004 until June 2022.<sup>23</sup> During this time, there was a sizeable  
 9 difference between the cash on hand reported on APMA PAC’s FEC disclosure reports and the  
 10 amount reported on its financial statements for the same time period.<sup>24</sup> While the cash-on-hand  
 11 discrepancy varied from year to year, the height of the discrepancy was \$169,342.<sup>25</sup>  
 12 Specifically, the Committee reported having \$459,759 of cash on hand as of May 31, 2020, on its  
 13 FEC disclosure report, but only \$290,417 in net assets as of May 31, 2020, on its financial

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general ledger. APMA PAC *Sua Sponte* Submission at 7. The report further states that \$10,780 in receipts were affected by these timing differences and that the errors were offset by the beginning of FY18-19. *Id.*

<sup>17</sup> These errors were not noted in the Committee’s external audit report.

<sup>18</sup> The Committee’s external audit report states that the Committee underreported its bank and credit card fees by \$4,520 in FY 19-20, APMA PAC *Sua Sponte* Submission at 6, but our review of the Committee’s FY 19-20 financial statement and the corresponding disclosure reports revealed an underreport of \$4,528 during this time.

<sup>19</sup> APMA PAC, FEC Form 99 (July 20, 2022), <https://docquery.fec.gov/pdf/073/202207209522243073/202207209522243073.pdf> (stating that the Committee made a \$1,000 input error in the cash-on-hand amount in its 2020 Year-End Report).

<sup>20</sup> Due to rounding, the other values in this table erroneously suggest that the change in the cash-on-hand discrepancy increased by \$3.

<sup>21</sup> 52 U.S.C. § 30104(a)(1); *see also* 11 C.F.R. § 104.3(a), (b).

<sup>22</sup> 52 U.S.C. § 30104(b)(1), (2), (4); 11 C.F.R. § 104.3(a), (b).

<sup>23</sup> APMA PAC *Sua Sponte* Submission at 2.

<sup>24</sup> *See supra* page 3 (reflecting a chart of APMA PAC’s cash-on-hand discrepancy from 2004 to 2022).

<sup>25</sup> *Id.*

1 statement.<sup>26</sup> This discrepancy is also reflected in the Committee's 2020 July Monthly Report,  
2 where the Committee reported having \$459,759 of cash on hand at the beginning of the reporting  
3 period on June 1, 2020, despite its financial statement reflecting that it had only \$290,417 in net  
4 assets the day prior.<sup>27</sup> Thus, the Commission opens a Matter Under Review and finds reason to  
5 believe that APMA PAC violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R. § 104.3(a)(1) by failing  
6 to accurately report its cash on hand.

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<sup>26</sup> Compare APMA PAC, FY 19-20 Financial Statement at 5 (May 20, 2022) (reflecting \$290,417 in net assets as of May 31, 2020), with APMA PAC, 2020 June Monthly Report at 2 (June 15, 2020), <https://docquery.fec.gov/pdf/829/202006159239787829/202006159239787829.pdf> (stating it had \$459,759 of cash on hand as of May 31, 2020).

<sup>27</sup> See APMA PAC, 2020 July Monthly Report at 2 (July 9, 2020), <https://docquery.fec.gov/pdf/494/202007169250337494/202007169250337494.pdf> (stating it had \$459,759 of cash on hand as of June 1, 2020).