

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **P-MUR 655**

4 DATES OF SUBMISSIONS: Apr. 15, 2022
 5 July 27, 2022
 6 Aug. 12, 2022
 7 Sept. 8, 2022
 8 Dec. 5, 2022

9 DATE ACTIVATED: June 7, 2023

10 EARLIEST SOL: June 16, 2009

11 LATEST SOL: June 20, 2027¹

12 ELECTION CYCLES: 2004-2022

13 **SOURCE:**

Sua Sponte Submission

14 **RESPONDENT:**

15 American Podiatric Medical Association Political
 16 Action Committee and Dr. William N. McCann in
 17 his official capacity as treasurer

18 **RELEVANT STATUTE**

19 **AND REGULATION:**

52 U.S.C. § 30104(b)(1)

20 11 C.F.R. § 104.3(a)(1)

21 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

22 **FEDERAL AGENCIES CHECKED:**

None

23 **I. INTRODUCTION**

24 This matter arises from a *sua sponte* submission from the American Podiatric Medical
 25 Association Political Action Committee and Dr. William N. McCann in his official capacity as
 26 treasurer (the “Committee” or “APMAPAC”) regarding a discrepancy between its actual cash on
 27 hand and what it reported on its FEC disclosure reports.² A review of the Committee’s financial
 28 statements prepared by its accounting firm and disclosure reports filed with the Commission

¹ To date, Respondent has agreed to toll the matter from June 21, 2022, to September 14, 2023, for a total of 450 days. Tolling Agreement (June 14, 2023); Tolling Agreement (Mar. 7, 2023); Tolling Agreement (Nov. 30, 2022); Tolling Agreement (Aug. 16, 2022); Tolling Agreement (June 22, 2022).

² APMAPAC *Sua Sponte* Submission at 2-3 (Apr. 15, 2022).

1 reveals that APMAPAC misreported its cash on hand beginning from at least June 16, 2004,
2 through June 20, 2022, and that the discrepancy between its actual and reported cash on hand
3 varied and grew to \$169,342 at its height. The Committee indicates that it did not detect these
4 errors until August 2019 because it did not reconcile its disclosure reports with its bank records.³
5 The Committee also represents that it waited until April 2022 to make the *sua sponte* submission
6 because it was advised by counsel to investigate the causes of the discrepancy before making the
7 submission.⁴ APMAPAC did not provide any explanation as to why it continued to report an
8 incorrect cash on hand until July 2022.

9 As described in further detail below, based on the Committee's *sua sponte* submissions
10 and disclosure reports, we recommend that the Commission open a Matter Under Review and
11 find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R.
12 § 104.3(a)(1) by failing to accurately report its cash on hand and enter into pre-probable cause
13 conciliation with the Committee.

14 **II. FACTUAL BACKGROUND**

15 APMAPAC is the separate segregated fund of the American Podiatric Medical
16 Association, Inc.⁵ Dr. William N. McCann is currently its treasurer.⁶ In August 2019, when
17 one of its officers compared its bank statement balance to the cash on hand reported on an FEC
18 disclosure report, APMAPAC discovered that there was a discrepancy between the two values.⁷

³ *Id.* at 2-3.

⁴ See Email from Jared B. Rifis, Attorney, APMAPAC, to Crystal Liu, Attorney, FEC, June 27, 2022 (15:57 EST); APMAPAC FEC-Relevant Timeline at 1 (Sept. 8, 2022).

⁵ APMAPAC, Amended Statement of Organization at 2 (Nov. 3, 2020), <https://docquery.fec.gov/pdf/114/202011039336742114/202011039336742114.pdf>.

⁶ *Id.* at 3.

⁷ APMAPAC *Sua Sponte* Submission at 2; APMAPAC FEC-Relevant Timeline at 1.

1 From February 2020 to April 2021, the Committee internally investigated the issue, and in the
2 latter half of 2021, underwent an audit conducted by Dembo Jones, the accounting firm that
3 prepares the Committee's annual financial statements.⁸ In April 2022, the Committee made this
4 *sua sponte* submission to the Commission.⁹ The Committee represents that the delay in making
5 the submission was due to its counsel advising it to complete an internal investigation of the
6 cash-on-hand discrepancy before making the submission, its officers becoming seriously ill, and
7 a change in counsel.¹⁰ The Committee further represents that the internal investigation took
8 longer than expected because of "access barriers to researching documentation" while working
9 remotely during the COVID-19 pandemic.¹¹

10 Along with its initial *sua sponte* submission, APMAPAC submitted its annual financial
11 statements from fiscal year ("FY") 04-05 through FY 21-22, which summarize its yearly
12 financial activity and appear to contain an accurate representation of the Committee's cash on
13 hand each May 31st.¹² The below graph reflects the discrepancy between the cash on hand as
14 reported on APMAPAC's disclosure reports and its financial statements each May 31st from
15 2004 to 2022:

⁸ APMAPAC FEC-Relevant Timeline at 1-2; APMAPAC *Sua Sponte* Submission at 3.

⁹ *See generally* APMAPAC *Sua Sponte* Submission.

¹⁰ Email from Jared B. Rifis, Attorney, APMAPAC, to Crystal Liu, Attorney, FEC, June 27, 2022 (15:57 EST); *see also* APMAPAC FEC-Relevant Timeline at 1.

¹¹ APMAPAC FEC-Relevant Timeline at 1.

¹² *See* APMAPAC, Financial Statements from FY 04-05 through FY 21-22. The Committee states that it does not have earlier financial statements in its possession. APMAPAC *Sua Sponte* Submission at 3.



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

3 According to APMAPAC's external audit, the cash-on-hand discrepancy increased from
 4 \$89,401 on May 31, 2015, to \$169,342 on May 31, 2020 — an increase of \$79,941 during this
 5 five-year period — because of (1) a 2015 unreported service agreement payment of \$55,262; (2)
 6 unreported credit card and bank fees of \$49,313, which were accumulated during this five-year
 7 period; (3) misreported political contributions resulting in an overreport of \$6,000 in
 8 disbursements; (4) differences between when a receipt was reported on an FEC disclosure report
 9 and when it was recorded on the Committee's ledger, resulting in an overreport of \$11,650; (5)
 10 unreported investment activity of \$4,087, which were also accumulated during this five-year
 11 period; and (6) an unidentified difference of \$2,897.¹³ APMAPAC represents that it has since
 12 implemented new internal controls, which include reconciling the activity disclosed on FEC

¹³ APMAPAC *Sua Sponte* Submission at 5-8.

1 reports with its bank statements and vice versa, and that in May 2020, its staff attended an FEC
2 training on reporting requirements.¹⁴

3 Despite discovering the cash-on-hand discrepancy in August 2019, the Committee did not
4 correctly report its cash on hand until July 20, 2022. Specifically, in June 2022, APMAPAC's
5 counsel spoke with the Office of General Counsel and indicated that the Committee's disclosure
6 reports continued to reflect an incorrect cash on hand. After conferring with the Office of
7 General Counsel, the Committee subsequently filed a 2022 July Monthly Report correctly
8 reporting its cash on hand as of June 30, 2022, and indicating that there was previously an
9 overreport of \$168,288.¹⁵ The Committee also filed an FEC Form 99 explaining the reasons for
10 the discrepancy.¹⁶

11 When comparing the Committee's annual financial statements to the disclosure reports
12 covering the same periods, it also appears that APMAPAC made the following mistakes on its
13 disclosure reports from FY 17-18 through FY 21-22:

¹⁴ *Id.* at 3, 9-10; APMAPAC FEC-Relevant Timeline at 2 (stating that APMAPAC staff attended a virtual FEC training in May 2020).

¹⁵ See APMAPAC, 2022 July Monthly Report at 2, 18 (July 20, 2022), <https://docquery.fec.gov/pdf/599/202207209522241599/202207209522241599.pdf>.

¹⁶ APMAPAC, 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).

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

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¹⁷ 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 general ledger. APMAPAC *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.*

¹⁸ These errors were not noted in the Committee's external audit report.

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. § 30104.²² 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.²³

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 2022.²⁴ During this time, there was a sizeable
 9 difference between the cash on hand reported on APMAPAC’s FEC disclosure reports and the
 10 amount reported on its financial statements for the same time period.²⁵ While the cash-on-hand
 11 discrepancy varied from year to year, the height of the discrepancy was \$169,342.²⁶
 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
 14 statement.²⁷ This discrepancy is also reflected in the Committee’s 2020 July Monthly Report,

¹⁹ The Committee’s external audit report states that the Committee underreported its bank and credit card fees by \$4,520 in FY 19-20, APMAPAC *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.

²⁰ APMAPAC, 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).

²¹ Due to rounding, the other values in this table erroneously suggest that the change in the cash-on-hand discrepancy increased by \$3.

²² 52 U.S.C. § 30104(a)(1); *see also* 11 C.F.R. § 104.3(a), (b).

²³ 52 U.S.C. § 30104(b)(1), (2), (4); 11 C.F.R. § 104.3(a), (b).

²⁴ APMAPAC *Sua Sponte* Submission at 2.

²⁵ *See supra* page 4 (reflecting a chart of APMAPAC’s cash-on-hand discrepancy from 2004 to 2022).

²⁶ *Id.*

²⁷ *Compare* APMAPAC, FY 19-20 Financial Statement at 5 (May 20, 2022) (reflecting \$290,417 in net assets as of May 31, 2020), *with* APMAPAC, 2020 June Monthly Report at 2 (June 15, 2020), <https://docquery.fec.gov/>

1 where the Committee reported having \$459,759 of cash on hand at the beginning of the reporting
2 period on June 1, 2020, despite its financial statement reflecting that it had only \$290,417 in net
3 assets the day prior.²⁸ Thus, we recommend that the Commission open a Matter Under Review
4 and find reason to believe that APMAPAC violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R.
5 § 104.3(a)(1) by failing to accurately report its cash on hand.

6 As reflected in the chart above,²⁹ the Committee also made errors when reporting its
7 receipts and disbursements.

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[pdf/829/202006159239787829/202006159239787829.pdf](https://www.fec.gov/disclosure/disclosure/202006159239787829/202006159239787829.pdf) (stating it had \$459,759 of cash on hand as of May 31, 2020).

²⁸ See APMAPAC, 2020 July Monthly Report at 2 (July 9, 2020), <https://www.fec.gov/disclosure/disclosure/202007169250337494/202007169250337494.pdf> (stating it had \$459,759 of cash on hand as of June 1, 2020).

²⁹ See *supra* page 6.

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3 **V. RECOMMENDATIONS**

4 1. Open a Matter Under Review;

5 2. Find reason to believe that the American Podiatric Medical Association Political
6 Action Committee and Dr. William N. McCann in his official capacity as
7 treasurer violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R. § 104.3(a)(1) by failing
8 to accurately report its cash on hand;9 3. Dismiss pursuant to *Heckler v. Chaney* the allegations that the American Podiatric
10 Medical Association Political Action Committee and Dr. William N. McCann in
11 his official capacity as treasurer violated 52 U.S.C. § 30104(b)(2), (4) and
12 11 C.F.R. § 104.3(a), (b) by failing to accurately report receipts and
13 disbursements;

14 4. Approve the attached Factual and Legal Analysis;


15 5. Authorize pre-probable cause conciliation with the American Podiatric Medical
16 Association Political Action Committee and Dr. William N. McCann in his
17 official capacity as treasurer;


1 6. Approve the attached proposed conciliation agreement; and


2 7. Approve the appropriate letter.

3 Lisa J. Stevenson
4 Acting General Counsel

5 Charles Kitcher
6 Associate General Counsel for Enforcement

7 
8 Date _____ Claudio J. Pavia
9 Deputy Associate General Counsel for Enforcement

10 
11 _____
12 Mark Shonkwiler
 Assistant General Counsel

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14 _____
15 Crystal Liu
 Attorney

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