OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE

ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722

ELECTIONS — (503) 986-1518

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| In the matter of a Late Contribution and Expenditure Report by Foresight Ophthalmology Political Action Committee, Nan Heim, Treasurer, for the Second Supplement to the Second Pre-Election for the November 7, 2006, General Election | ) ) ) ) ) | Notice of Proposed Civil Penalty; Opportunity to Request Hearing |

May 16, 2007 Case Number: L9164

Foresight Ophthalmology Political Action Committee (000066)
Nan Heim, Treasurer
833 SW 11th Ave Ste 315
Portland, OR 97205

Dear Ms. Heim:

This letter constitutes a Notice of Proposed Civil Penalty. Please read the information below carefully and contact our office if you have any questions about its contents or necessary actions on your part.

**Reason for Notice:**

This notice is being sent to you as a result of your failure to file a second supplement to the second pre-election contribution and expenditure report (see ORS 260.073). This report, which discloses aggregate contributions of more than $500 from a single source and aggregate expenditures of more than $1,000 to a single payee between October 23 and November 2, 2006, was due in the office of the Secretary of State, Elections Division, not later than 5:00 pm, November 3, 2006. The contribution that was required to be included on the second supplement to the second pre-election report ($1,000.00 from Debra Graham on October 30, 2006) was first disclosed on your post-election report filed on November 30, 2006. The second supplement to the second pre-election report is considered filed on November 30, 2006, making it 17 business days late.

**Authority for Civil Penalty:**

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.232 and has adopted the *2006 Campaign Finance Manual* by administrative rule. The penalty is imposed against the treasurer of record at the time of the violation.

**Explanation of the Penalty Matrix:**

Enclosed is the penalty matrix used in calculating penalties for late reports. This matrix reduces the maximum statutory civil penalty to an amount not to exceed a percentage of the total contributions or total expenditures—whichever is greater—for each business day the report was late. The percentage is based upon whether the treasurer has committed any previous late violations since September 15, 2005, as follows:

- First Violation: One percent
- Second Violation: Three percent
- Third or Subsequent Violation: Five percent

Additionally, the matrix sets minimum penalties based on the number of previous late violations and maximum penalties based on the type of report and the activity level of the committee during the accounting period of the late report.

**Proposed Civil Penalty:**

The Secretary is proposing a civil penalty of $100.00, the maximum penalty when the total contributions or total expenditures—whichever is greater—is between $0 and $2,000.

The actual calculated penalty is $510.00—$1,000.00 x 3% x 17 days—which exceeds the maximum penalty. This calculated penalty takes into consideration that $1,000.00 is the greater of the total contributions or total expenditures required to be included on the report and this is the treasurer's second late violation.

**Reduction or Waiver of Penalty:**

A reduction or waiver of the penalty will be considered <u>only</u> if one of the following mitigating circumstances is present:

a) the lateness is the direct result of clearly-established fraud, embezzlement or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

b) the lateness is the direct result of fire, flood, utility failure or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records;

   *Calamitous event means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight.*

c) the lateness is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax);

d) the lateness is the direct result of an error by the elections filing officer; or

e) the lateness is the direct result of a valid personal emergency of the candidate or treasurer. In this case, independent written verification must be provided.

   *A valid personal emergency is a serious personal illness or death in the immediate family of the candidate or treasurer, which caused a report to be late. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made.*

It is your responsibility to show that one of the listed circumstances occurred and that it caused the late filing of your report.

**Opportunity to Request a Hearing:**

**You have 20 days* from the date you received this certified letter to take one of the following actions:**

| Action | Result |
|---|---|
| Request a hearing to be conducted by an independent hearings officer to present evidence of mitigating circumstances (public hearing). This hearing will be held by telephone unless you request that it be a personal appearance hearing held in Salem. | A public hearing will be scheduled within 30 days and you will be notified of the date and time. You may choose to submit written **notarized** testimony or other evidence in lieu of a public hearing. *Those documents must be received not later than three business days before the day of the hearing.* |
| Submit a **notarized** written explanation providing evidence of mitigating circumstances (letter hearing). | No public hearing will be scheduled and an order will be issued based on the written testimony and the hearing record (which is the agency file for this committee). |
| Do not take any action. | A penalty will be assessed based on available information. |

(* If the certified letter is refused or left unclaimed at the post office, the 20-day period begins on the day the post office indicates it has given first notice of a certified letter.)

If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,

Nancy Ferry
Compliance Specialist

enclosures
certified mail
return receipt requested
c: uncertified