

**U.S. Department of Labor**

Office of Labor-Management Standards  
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December 1, 2009

Scott Irwin, President  
Collective Negotiations Committee  
New York Physical Therapy Association  
5 Palisades Drive, Suite 330  
Albany, NY 12205

LM File Number: 509-208

Case Number: [REDACTED]

Dear Mr. Irwin:

This office has recently completed an audit of the Collective Negotiations Committee (CNC), NY under the Compliance Audit Program (CAP) to determine your organization's compliance with the provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). As discussed during the exit interview with Finance Manager Pam Cook on November 17, 2009 the following problems were disclosed during the CAP. The matters listed below are not an exhaustive list of all possible problem areas since the audit conducted was limited in scope.

The audit of the CNC's 2008/2009 records revealed the following recordkeeping violations:

Reporting Violations

The audit disclosed a violation of LMRDA Section 201(b), which requires labor organizations to file annual financial reports accurately disclosing their financial condition and operations. The Labor Organization Annual Report Form LM-3 filed by the CNC for fiscal year ending June 30, 2009, was deficient in that:

1. Disbursements to Officers

The CNC did not include some reimbursements to officers in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 48 (Office & Administrative Expense) or Item 54 (Other Disbursements).

The union must report most direct disbursements to the CNC officers and some indirect disbursements made on behalf of its officers in Item 24. A "direct disbursement" to an officer is a payment made to an officer in the form of cash, property, goods, services, or other things of value. See the instructions for Item 24 for a discussion of certain direct disbursements to officers that do not have to be reported in Item 24. An "indirect disbursement" to an officer is a payment to another party (including a credit card company) for cash, property, goods, services, or other things of value received by or on behalf of an officer. However, indirect disbursements for temporary lodging (such as a

union check issued to a hotel) or for transportation by a public carrier (such as an airline) for an officer traveling on union business should be reported in Item 48 (Office and Administrative Expense).

## 2. Additional Information and Signatures

Signatures on the Form LM-3 were not the president and treasurer and no explanation of the change in signators was provided.

If the report is signed by an officer or employee other than the president or treasurer, cross out the printed title, enter the correct title in Item 57 (signature of President) or 58 (signature of Treasurer) and explain in Item 56 (Additional Information) why the president or treasurer did not sign the report.

I am not requiring that the CNC file an amended LM report for 2009 to correct the deficient items, but the CNC has agreed to properly report the deficient items on all future reports it files with OLMS.

## 3. Failure to File Bylaws

The audit disclosed a violation of LMRDA Section 201(a), which requires that a union submit a copy of its revised constitution and bylaws with its LM report when it makes changes to its constitution or bylaws. The CNC amended its constitution and bylaws in January 2007, but did not file a copy with its LM report for that year.

CNC has now filed a copy of its constitution and bylaws.

### Other Violation

The audit disclosed the following other violation:

#### Inadequate Bonding

The audit revealed a violation of LMRDA Section 502 (Bonding), which requires that union officers and employees be bonded for no less than 10 percent of the total funds those individuals or their predecessors handled during the preceding fiscal year.

The CNC officers and employees are not currently bonded according to the LMRDA requirements. The CNC should obtain adequate bonding coverage for its officers and any person who handles union funds or property immediately. Please provide proof of bonding coverage to this office as soon as possible, but not later than December 31, 2009.

The law provides that any person who "handles" union funds or property must be bonded for at least 10% of the funds handled during the union's preceding fiscal year up to a maximum of \$500,000. An individual is considered to be "handling" union funds if his/her duties or authority

provide access to union funds resulting in a significant risk of loss of funds if that person engages in fraudulent or dishonest acts. For example, a person who receives dues, fees, etc... from members is clearly handling union funds and therefore must be bonded. Also, however, any officer or employee who has authority to sign checks on the union's account is "handling" union funds and must be bonded even if he/she has no physical contact with the funds. Individuals who typically must be bonded include union officers (both elected and non-elected), employees such as business agents, trustees, key administrative and professional staff, and clerical personnel.

I want to extend my personal appreciation to the CNC for their cooperation and courtesy extended during this compliance audit. I strongly recommend that you make sure this letter and the compliance assistance materials provided to you are passed on to future officers. If we can be of any additional assistance, please do not hesitate to call.

Sincerely,



Investigator

cc: Robin Winn, Vice Chairwoman  
Pamela Cook, Finance Manager  
Jack Ahern, Labor Management Consultant