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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5379
DATE COMPLAINT FILED: July 23, 2003
DATE OF NOTIFICATION: July 30, 2003
DATE ACTIVATED: September 24, 2003

STATUTE OF LIMITATIONS:
May 16, 2008

COMPLAINANT: Ryan Hampton, Financial Director, Peter Deutch
for Senate

RESPONDENTS: Alex Penelas US Senate Campaign and Carlos M.
Trueba, as treasurer
CarePlus Medical Centers, Inc.
Michael B. Fernandez
Heriberto Valdes

RELEVANT STATUTES
AND REGULATIONS
2 U.S.C. § 441b(a)
11 C.F.R. § 103.3(b)
11 C.R.F. § 110.6(d)(2)
11 C.F.R. § 114.2(f)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves alleged corporate facilitation of campaign contributions to Alex Penelas US Senate Campaign ("Penelas Committee").¹ The complaint, citing to an article published in The Miami Herald (Attachment 1 at 1-4), alleges that the Penelas Committee "knowingly accepted contributions made by employees and vendors of CarePlus Medical

¹ The Penelas Committee is Alex Penelas' principal campaign committee. Penelas Committee Statement of Organization (April 8, 2003). Alex Penelas is a candidate for the U.S. Senate seat being vacated by Senator Bob Graham. The primary election is scheduled for August 31, 2004.

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Centers, Inc. ("CarePlus"), which were solicited in an illegally coercive manner." Complaint at 1. The email solicitation, allegedly written by Heriberto ("Bert") Valdes, Vice President of CarePlus, was directed to "all physicians and executive level staff" at CarePlus and stated, *inter alia*, that they were expected to donate. See Exhibit 4 to the complaint. The Penelas Committee, which learned about this fundraising solicitation, later accepted \$49,000 in campaign contributions from CarePlus employees and their spouses without making any efforts to determine whether the contributions were coerced. As discussed more fully below, based on the complaint, the responses, and publicly available information, this Office recommends that the Commission make reason to believe findings against each of the above-captioned respondents and open an investigation into this matter.

II. FACTUAL AND LEGAL ANALYSIS

A. CarePlus

1. Background

CarePlus operates 12 medical clinics in south Florida. Jim DeFede, *Fundraising effort raises concerns*, The Miami Herald, March 30, 2003 (Attachment 1 at 1). Michael B. Fernandez is owner and chief executive officer of CarePlus. *Id.* Fernandez, who is a member of Miami-Dade County Mayor Alex Penelas' Healthcare Access Task Force, is also a supporter of Mayor Penelas' campaign for the U.S. Senate. *Id.* Fernandez reportedly instructed Valdes to collect contributions from CarePlus employees for Mayor Penelas' Senate campaign. *Id.* Valdes subsequently met with the administrators of CarePlus' medical centers and discussed Mayor Penelas' candidacy. CarePlus Response, Statement of Heriberto Valdes ("Valdes Statement") ¶ 7. According to Valdes, one of the administrators, Jesus Vidueira, asked for "written talking points about Mayor Penelas that he could use when soliciting people." *Id.* ¶ 8. Valdes stated

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1 that "around midnight" on March 23, 2003, he drafted an email on his home computer and sent it
2 to Vidueira. *Id.* ¶ 10. Valdes further stated that Vidueira was "free to send it to any other
3 interested administrators." *Id.* ¶ 9. Valdes believes that Vidueira "forwarded the email, or some
4 version of it, to four other administrators." *Id.* ¶ 11.

5 The March 24, 2003 email ("March 24 email") submitted as Exhibit 4 to the complaint
6 states, in pertinent part:

7 The following is directed to all physicians and executive level staff at
8 CarePlus Medical Centers Inc. Mr. Michael B. Fernandez, owner and
9 Chief Executive Officer of CarePlus Medical Centers Inc. is asking for
10 your help. Alex Penelas, Dade County Mayor and strong supporter of
11 Mike Fernandez and CarePlus Medical Centers is running for United
12 States Senate. * * * Mr. Mike Fernandez is asking each of you for a
13 \$1,000.00 campaign contribution for the Alex Penelas for Senate
14 Campaign. The deadline for this contribution is Friday the 28th. He has
15 asked for an accounting of the individuals that donate and those that did
16 not. He will be contacting the individuals that donate to thank you
17 personally. * * * As painful as this may seem, it will not be any easier
18 tomorrow so pull out your checkbooks and write the check today to the
19 order of Alex Penelas for Senate and the check must be dated April 2,
20 2003 or later. All physicians, large vendors and executive level staff will
21 be expected to donate. The center administrator has been assigned to
22 collect and submit the contributions to Ed Rubio, Director of Operations.

23 The email concludes, "Sincerely, Bert Valdes, Vice President; Dr. Jose Perez, Medical
24 Director."²

25 The text of the email is in dispute. Valdes "believes" that the document attached to the
26 complaint differs from his original email, which he has been unable to locate. Valdes Statement
27 ¶ 12. Valdes claims that while he encouraged Vidueira to "approach physicians, large vendors,
28 and executive level staff," "[t]here was no 'expectation' that these persons would contribute in
29 the sense of a requirement." *Id.* ¶ 13. Valdes, however, did not deny that the sentence "All

² We have no information regarding Dr. Perez's role, if any, in connection with the solicitation. CarePlus' response did not include a sworn statement from Dr. Perez.

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1 physicians, large vendors and executive level staff will be expected to donate" appeared in his
2 original email. *Id.* Valdes also claims that his email "did not ask that non-contributors be
3 tracked." *Id.* ¶ 15.

4 The Miami Herald, which quoted portions of the email in its March 30, 2003 article,
5 asked Javier Soto, Mayor Penelas' chief of staff, to comment on the email. Soto reportedly
6 stated that he was unaware of the email. Jim DeFede, *supra*, (Attachment 1 at 2). After
7 obtaining a copy of the email from CarePlus, Soto reportedly told The Miami Herald that his
8 copy did not include the sentence "that talked about physicians and executive level staff being
9 'expected to donate.'" *Id.* at 3.

10 Fernandez, too, stated he was unaware of Valdes' email until The Miami Herald
11 questioned him about it.³ CarePlus Response, Statement of Michael B. Fernandez ("Fernandez
12 Statement") ¶ 7. On April 1, 2003, two days after The Miami Herald's article was published,
13 Fernandez sent an email to the medical center administrators. *Id.* ¶ 9. In his email, Fernandez
14 told his employees that he did not authorize the email requesting contributions to Mayor Penelas'
15 Senate campaign, that the email should be disregarded in its entirety, and that any contributions
16 received as a result of the email should be returned. Fernandez's email further stated that he
17 intended to hold a fundraiser for Mayor Penelas and that anyone interested may contribute at that
18 time. The email concluded, "You may refuse to contribute without reprisal and contributions to
19

³ Valdes claims that he "had not discussed, much less cleared, this email with Mr. Fernandez" Valdes Statement ¶ 14.

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1 Penelas for Senate or any other candidate committee are strictly voluntary.”⁴ Attachment A to
2 Fernandez Statement. A week after Fernandez sent his email, The Miami Herald reported that
3 “employees who were pressured to write checks for Alex Penelas’ Senate campaign were given
4 those checks back.” Jim DeFede, *Was helping hand from strong arm?* The Miami Herald, April
5 8, 2003 (Attachment 1 at 5).

6 Fernandez’s fundraiser for Mayor Penelas took place on May 8, 2003, at Fernandez’s
7 house. Penelas Committee Response, Carlos M. Tranba Affidavit ¶ 4. More than \$75,000 was
8 raised at the fundraiser. Penelas Committee Response, Nelson Hincapie Affidavit ¶ 5.
9 According to Hincapie, assistant to the Penelas campaign’s finance director, the only checks the
10 Penelas Committee received from Fernandez’s efforts came from the fundraiser. *Id.* ¶ 4. The
11 itemized contributions collected from the Fernandez event totaled \$74,000.⁵ Penelas
12 Committee’s July 15 Quarterly Report of Receipts and Disbursements (July 16, 2003). Thirty-
13 three (33) of the 57 itemized contributions, totaling \$35,000, came from physicians and
14 executive level staff of CarePlus and a sister company, CarePlus Health Plans, Inc.

15 2. Analysis

16 The gravamen of the complaint is that CarePlus illegally solicited its employees for
17 contributions to Mayor Penelas’ Senate campaign. Under the Federal Election Campaign Act of
18 1971, as amended (“Act”), corporations are permitted to communicate to their stockholders and
19 executive or administrative personnel and their families on any subject. 2 U.S.C.
20 § 441b(b)(2)(A). Such communications can include a solicitation or suggestion that they

⁴ On March 31, 2003, Fernandez retained a law firm to brief CarePlus’ executives, provide handouts, and review and approve invitations and procedures for his May fundraiser and any future fundraising activity. Fernandez Statement ¶ 12. Fernandez’s April 1, 2003 email appears to comply with the requirements of 2 U.S.C. § 441b(b)(3)(C).

⁵ According to Hincapie, 11 checks totaling \$2,100 were also received from that event. Hincapie Affidavit ¶ 5. Those checks were apparently reported as unitemized contributions.

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1 contribute to a particular candidate, "so long as the corporation limits its activity to
2 communication only and does not actually facilitate the making of the member's contribution to
3 the candidate." Advisory Opinion 1987-29 (*citing* 11 C.F.R. § 114.3).

4 The Commission's regulations define "facilitation" as "using corporate . . . resources or
5 facilities to engage in fundraising activities in connection with any federal election . . ."⁶
6 11 C.F.R. § 114.2(f)(1). Facilitation also can involve "[u]sing coercion, such as the threat of a
7 detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any
8 individual to make a contribution or engage in fundraising activities on behalf of a candidate or
9 political committee." 11 C.F.R. § 114.2(f)(2)(iv).

10 The March 24 email appears to coercively solicit contributions to the Penelas Committee.
11 Although the email does not expressly threaten detrimental job action, financial reprisal, or force,
12 the gist of the message was that certain employees were "expected" to contribute to the Penelas
13 Committee and that Fernandez – the boss – would not look favorably upon those who did not
14 contribute. First, the email says that Fernandez is asking for the contribution. Thus, recipients of
15 the email know that the person who is ultimately responsible for making decisions regarding
16 salaries, bonuses, and promotions is asking them to contribute. Second, it states that Fernandez
17 has asked for an accounting of the individuals who do and do not contribute. As such, Fernandez
18 will know who has not complied with his request for contributions. Third, and most
19 significantly, it allegedly states that all physicians, large vendors, and executive level staff are
20 "expected" to contribute, thereby signifying that this is a requirement and not merely a request.

⁶ The Act's broad prohibition on corporate contributions (2 U.S.C. § 441b(a)) extends to "anything of value" given to any candidate in connection with any federal election 2 U.S.C. § 441b(b)(2). When a corporation fundraises for a federal candidate and the campaign accepts contributions collected by the corporation, the committee has accepted something of value from that corporation. See MUR 3987 (*Friends of Jane Hawman*) (Commission found probable cause to believe that Committee violated section 441b(a) by accepting contributions that were solicited, collected, and forwarded by corporate employees).

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1 The purpose of this email apparently was to coerce certain CarePlus employees into making a
2 \$1,000 contribution to the Penelas Committee.

3 Fernandez claims that he has "never coerced any employee to attend a fundraiser, make a
4 political contribution, or otherwise engage in political activity." Fernandez Statement ¶ 13.

5 However, it appears that this was not the first time CarePlus employees were coerced into
6 making campaign contributions to a candidate Fernandez supported. According to The Miami
7 Herald, in April of 2002, Fernandez sent a letter to company employees soliciting contributions
8 to Senator Bill Nelson's campaign committee. The letter stated, "this is not a requirement, but a
9 request." Jim DeFede, *supra*, April 8, 2003 (Attachment 1 at 5-6). Yet, according to The Miami
10 Herald, "[t]wo employees who received the letter said despite the language that this was only a
11 'request,' supervisors at the clinics told them they were expected to donate." *Id.* at 6. One
12 employee stated, "The administrator told me that a list was going to be kept of who did and did
13 not contribute because Michael [Fernandez] had asked for a list." *Id.*

14 Similarly, the March 24 email informed employees that Fernandez "has asked for an
15 accounting of the individuals that donate and those that did not." Complaint, Exhibit 4. One
16 CarePlus employee reportedly told The Miami Herald, "To tell me that a list was going to be
17 kept, and that we are going to know who did and did not contribute, it was just too much strong-
18 arming for me." Jim DeFede, *supra*, April 8, 2003 (Attachment 1 at 5). We agree and therefore
19 conclude, if true, that the March 24 email was a coercive solicitation.

20 The next question is whether any CarePlus employees contributed to the Penelas
21 Committee as a result of the March 24 email. Fernandez's April 1, 2003 email "directed that any
22 contributions received as a result of that email be returned." Attachment A to Fernandez

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1 Statement. The Miami Herald subsequently reported that the contributions were returned.⁷ Jim
2 DeFede, *supra*, April 8, 2003 (Attachment 1 at 5). Yet, one month later, 33 physicians and
3 executive level employees of CarePlus and CarePlus Health Plans made contributions to the
4 Penelas Committee, ranging from \$250 to \$2,000.⁸ In addition, ten "Benefits Consultants"
5 contributed \$200 each and one gave \$100 to the Penelas Committee. CarePlus Response. More
6 information is needed to determine if any individuals were coerced into making their
7 contributions. However, given the response of the March 24 email, the coercive tactics
8 reportedly employed by CarePlus supervisors in raising funds for Senator Nelson's 2002
9 campaign committee, and the employee responses to the email and the Nelson matter reported to
10 the press, we believe Complainant's allegations warrant an investigation.

11 Moreover, not only is it possible that some of the contributions were coerced, some of the
12 contributions may have been collected by CarePlus employees and forwarded to the Penelas
13 Committee in violation of the Act as well. The March 24 email stated, "The center administrator
14 has been assigned to collect and submit the contributions to Ed Rubio, Director of Operations."
15 Complaint, Exhibit 4. Corporate facilitation includes collecting earmarked contributions and
16 delivering them to the candidate. See Advisory Opinion 1986-4. For a corporation to properly
17 collect and forward contributions earmarked to a candidate, such activity must be performed by
18 the corporation's separate segregated fund, in accordance with the provisions of 11 C.F.R.
19 § 110.6; otherwise, such activity is considered improper facilitation. 11 C.F.R. § 114.2(f)(3)(ii).
20 CarePlus does not have a separate segregated fund.

⁷ The Committee's report did not disclose the alleged contributions or reference any refunds.

⁸ Twenty employees made \$1,000 contributions, six gave \$2,000, and seven gave \$500 or less.

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1 Based on the information presently available, it is not clear whether any of the
2 contribution checks were collected by CarePlus employees prior to the fundraiser. CarePlus did
3 not provide any information in its response regarding how the contribution checks were
4 delivered to the Penelas Committee. The Penelas Committee, in its response, did not answer this
5 question either. Hincapie, assistant to the Penelas campaign's finance director, merely stated that
6 the checks from the fundraiser were delivered to him by Fred Menachem, the Penelas
7 campaign's finance director. Hincapie Affidavit ¶ 3. Menachem reportedly denied that
8 contribution checks were collected ahead of time. Peter Wallsten and Jason Grotto, *Many*
9 *Penelas donors linked to firm's chief*, The Miami Herald, July 23, 2003 (Attachment 1 at 9).
10 Yet, in light of the March 24 email, which directed center administrators to collect and submit
11 the contributions to Ed Rubio, Director of Operations (Exhibit E to the complaint), and
12 Fernandez's April 24, 2002 letter instructing employees to mail their contributions to Senator
13 Nelson's campaign to Fernandez at the office (Jim DeFede, *supra*, April 8, 2003 (Attachment 1
14 at 6)), we believe that the circumstances surrounding the collection and forwarding of the
15 CarePlus employees' contributions to the Penelas Committee should be investigated as well.

16 Accordingly, this Office recommends that the Commission find reason to believe that
17 CarePlus Medical Centers, Inc., Michael B. Fernandez, and Heriberto Velde violated 2 U.S.C.
18 § 441b(a).⁹

⁹ Directors and officers of a corporation are liable under the Act for consenting to corporate contributions and expenditures that violate the Act. 2 U.S.C. § 441b(a).

B. Alex Penelas US Senate Committee

1. Background

According to Carlos M. Trueba, the Penelas Committee's treasurer, he became aware of the March 24 email and the controversy surrounding the solicitation of CarePlus employees when the March 30, 2003 article was published. Trueba Affidavit ¶ 2. Four days later, on April 3, 2003, The Miami Herald published an article questioning whether Mayor Penelas, directly or through intermediaries, asked Fernandez to start raising money before the campaign account was opened.¹⁰ Jim DeFede, *Did fundraising break the rules?* The Miami Herald, April 3, 2003 (Attachment 1 at 10-12). Mayor Penelas' spokesman, Ric Katz, reportedly stated, "no one connected to the mayor authorized anyone at CarePlus to start raising money." *Id.* at 11. Katz also told the newspaper, "the money raised by CarePlus would not be accepted by Penelas." *Id.* The April 3, 2003 article also drew attention to the passage in the March 24 email that dealt with the collection of contribution checks by company officials. *Id.* at 10.

On April 8, 2003, The Miami Herald published another article concerning the March 24 email. In that article, The Miami Herald reported that the "employees who were pressured to write checks for Alex Penelas' Senate campaign were given those checks back." Jim DeFede, *supra*, April 8, 2003 (Attachment 1 at 5). That article also pointed out that CarePlus employees were pressured into making contributions to Senator Nelson's campaign committee in April of 2002. *Id.* at 6.

¹⁰ Mayor Penelas officially began his campaign for the U.S. Senate and opened his campaign account on April 2, 2003. Penelas Committee Statement of Organization (April 8, 2003) at 5.

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1 Sometime after Fernandez's May 8, 2003 fundraiser, the Penelas Committee received
2 contribution checks from that event.¹¹ Trueba Affidavit ¶ 3. Hincapie examined the checks to
3 verify the names, employers, and occupations of the contributors. Hincapie Affidavit ¶ 3.
4 Trueba reviewed a printout of the contributions. Trueba Affidavit ¶ 3. However, neither
5 Hincapie nor Trueba questioned the legality of the contributions; they merely assumed that the
6 CarePlus employees' contributions were in connection with the fundraiser and not the March 24
7 email. Hincapie Affidavit ¶ 4, 5; Trueba Affidavit ¶ 4. Finally, the Penelas Committee has not
8 returned, and, reportedly, does not plan to return, the contributions. Ken Thomas, *Deutsch files*
9 *FEC complaint over Penelas fund-raising*, Naples Daily News, July 24, 2003 (Attachment 1 at
10 13-14).

11 2. Analysis

12 The basis of the complaint against the Penelas Committee is that it knowingly accepted
13 illegally solicited contributions from CarePlus employees. Complaint at 1. The Act makes it
14 illegal for political committees to knowingly accept or receive contributions from prohibited
15 sources such as corporations. 2 U.S.C. § 441b(a).

16 Under the Act, the Penelas Committee's treasurer is responsible for examining all
17 contributions for evidence of illegality. 11 C.F.R. § 103.3(b). Contributions that, when received,
18 present genuine questions as to whether they were made by corporations or other prohibited
19 sources may either be deposited into a campaign depository or returned to the contributor within
20 ten days of the receipt. If any such contribution is deposited, the treasurer shall make his or her

¹¹ As discussed above, it is not clear who collected the checks and delivered them to the Penelas Committee. In its response to the complaint, the Penelas Committee claimed that "checks were received at that event by campaign volunteers." Penelas Committee Response at 2. The Penelas Committee, however, tendered no evidence to support that claim.

1 best efforts to determine the legality of the contribution. 11 C.F.R. § 103.3(b)(1). See Advisory
2 Opinion 1995-19.

3 Advisory Opinion 1995-19 is instructive on the issue of a treasurer's duty when
4 confronted with information that contributions received by the committee may be illegal. There,
5 the treasurer of the Indian-American Leadership Investment Fund ("Fund") learned from a
6 reporter that some of the individuals who contributed to the Fund did not appear to have the
7 financial means to make contributions in the amount they made. An article containing these
8 allegations later appeared in the newspaper. Advisory Opinion 1995-19 at 1. The Fund's
9 treasurer requested the advisory opinion because the checks, on their face, did not present a
10 question of their legality and the treasurer had no information verifying the illegality of the
11 contributions other than what was reported in the newspaper. *Id.* at 2. The Commission
12 concluded, "These circumstances present a sufficient basis to question the legality of at least
13 some of the contributions at issue." *Id.* at 4. The Commission advised the Fund's treasurer that
14 he should either (1) contact the contributors by mail and request a signed statement confirming
15 the legality of the contribution, or (2) contact the contributors by telephone, request oral
16 confirmation of the legality of the contributions, and memorialize the conversations in a written
17 memorandum. *Id.* at 2.

18 Here, by the time the Penelas Committee accepted the CarePlus employees' campaign
19 contributions, the Committee was already aware of the questionable methods employed by
20 CarePlus executives to obtain contributions from its employees. Trueba stated that he became
21 aware of the situation when The Miami Herald article appeared on March 30, 2003. Trueba
22 Affidavit ¶ 2. In addition, between March 30, 2003 and May 8, 2003, there were two other
23 Miami Herald articles questioning CarePlus' fundraising activities. One of these articles

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1 included a statement by a former FEC General Counsel explaining that the alleged collection of
2 contribution checks by CarePlus officials is prohibited corporate activity called bundling. Jim
3 DeFede, *supra*, April 3, 2002 (Attachment 1 at 10). Moreover, Mayor Penelas' spokesman told
4 The Miami Herald that Penelas would not accept the money from CarePlus. *Id.* at 11. These
5 circumstances present a sufficient basis to question the legality of the CarePlus employees'
6 contributions. *See* 11 C.F.R. § 103.3(b).

7 Therefore, this Office recommends the Commission find reason to believe Alex Penelas
8 US Senate Campaign and Carlos M. Trueba, as treasurer, violated 2 U.S.C. § 441b(a).

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IV. RECOMMENDATIONS

1. Find reason to believe that CarePlus Medical Centers, Inc. violated 2 U.S.C. § 441b(a).
2. Find reason to believe that Michael B. Fernandez violated 2 U.S.C. § 441b(a).
3. Find reason to believe that Heriberto Valdes violated 2 U.S.C. § 441b(a).
4. Find reason to believe that Alex Penelas US Senate Campaign and Carlos M. Trueba, as treasurer, violated 2 U.S.C. § 441b(a).
5. Approve the attached Factual and Legal Analyses.
- 6.
7. Approve the appropriate letters.

Lawrence H. Norton
General Counsel


2/9/04
Date

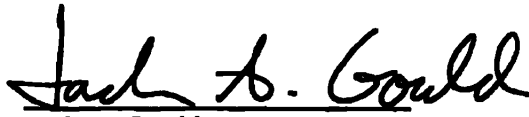
BY:

Rhonda J. Vosdingh
Rhonda J. Vosdingh
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Cynthia E. Tompkins
Assistant General Counsel


Jack A. Gould
Attorney


Renee D. Salzmnn
Attorney

Other Staff Assigned: Wade Sovonick

Attachments:

1. News Articles



Posted on Sun, Mar. 30, 2003
Jim DeFede - The Miami Herald

Fundraising effort raises concerns

In a few weeks, Miami-Dade County Mayor Alex Penelas is expected to formally announce he's running for the United States Senate. As is always the case in politics, money will be a major factor in determining whether his campaign will be successful.

His main rival for the Democratic nomination, U.S. Rep. Peter Deutsch, already has a campaign war chest of \$2.5 million.

One person eager to help Penelas is Michael Fernández, owner and chief executive officer of CarePlus Medical Centers Inc. based in Coral Gables. The company operates 12 clinics in Miami-Dade and Broward counties, has more than 950 employees and generates revenue of nearly \$400 million a year.

Fernández has been a major campaign contributor to both the Democratic and Republican parties and most recently helped raise money for Bill Richardson's campaign to become governor of New Mexico. He has now pledged his support to Penelas.

"I've been trying to raise as much as I can for Alex," Fernández said. "Hopefully, I can raise a hundred zillion dollars for the guy."

TASK FORCE MEMBER

Fernández said he believes Penelas has done great things for Miami. Fernández is a member of Penelas' Healthcare Access Task Force, which has been studying ways to better provide medical services to the indigent and uninsured. Fernández was co-chair of the subcommittee that dealt with the working uninsured.

One of the recommendations of that subcommittee, adopted by the mayor, is to create an insurance pool, subsidized by taxpayers, that would allow small businesses to offer no-frills insurance coverage to their employees. The mayor's task force estimates this pool for the working uninsured could help as many as 200,000 people in Miami-Dade County and would allow them to seek medical help from hospitals and clinics other than Jackson Memorial Hospital.

As part of the effort to raise money for Penelas, Fernández said he instructed his company's vice president, Bart Valdez, to start collecting contributions last week from company employees.

"Mr. Valdez started the fundraising at my direction," Fernández explained during an interview Friday evening.

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E-MAIL SENT

On Monday, Valdes sent an e-mail to all "physicians and executive level staff" noting Pencelas has been a "strong supporter of Mike Fernandez and CarePlus Medical Centers" and that the mayor is now running for the United States Senate.

"[Pencelas] has been working closely with Mr. Mike Fernandez and other community leaders to effect change in the indigent care programs that could represent opportunities for companies like ours to increase revenue while serving our indigent population and providing alternatives other than Jackson Memorial Health Systems," the e-mail states. "Mr. Mike Fernandez is asking each of you for a \$1,000 campaign contribution for the Alon Pencelas for Senate Campaign. The deadline for this contribution is Friday the 28th. He has asked for an accounting of the individuals that donate and those that did not."

The e-mail explains that Fernandez wants to be able to thank those who donate "personally." The e-mail goes on to state the checks "must be dated April 2, 2003, or later."

"All physicians, large vendors and executive level staff will be expected to donate," the e-mail adds.

In an interview Friday, Valdes defended the solicitation. When I read him the section regarding how the mayor's healthcare initiatives "represent opportunities for companies like ours to increase revenue," Valdes said there was nothing wrong with making such a statement.

"Anytime we can tap into any programs, whether they are federal or local, we see that as an opportunity," Valdes said.

UP TO INDIVIDUALS

Asked about the line in the e-mail in which the recipients were "expected to donate," he said it was still ultimately up to each individual.

"They understand that it is voluntary," he said.

Pencelas refused to be interviewed for this story. The mayor's chief of staff, Javier Soto, said he was unaware of the e-mail and expressed concern at its contents.

"I know that Mike Fernandez in public meetings of the Healthcare Access Task Force has stated that neither he nor his enterprise would seek to engage in any type of business relationship with anything that is created or occurs as a result of the efforts of the Healthcare Access Task Force," Soto said. "So I am a little surprised to hear about this e-mail."

An hour later, the mayor's chief of staff called back, saying the company had just sent him a copy of the e-mail, and that the sentence that referred to increasing revenue and the sentence that talked about all physicians and executive level staff being "expected to donate" were not in the version sent him.

Valdes did not return subsequent calls for comment.

Friday evening, Fernández said he had not seen the e-mail, but he vehemently denied his company will try to financially benefit from the mayor's healthcare initiatives. His clinics mainly serve senior citizens who will not be covered under this proposal.

"I have put a lot of time and effort in this job trying to serve this community, and for you to turn it around and say that I am going to benefit from it is wrong," he said. "We will not participate in it as an insurer or a provider of healthcare coverage."

The e-mail raises other concerns, as well.

Since Penelas has not opened a campaign account or filed his paperwork to become an official candidate, collecting checks would violate campaign finance rules.

Political consultant Nic Katz, who is acting as Penelas' spokesman on matters relating to the possible Senate race, sought to distance the mayor from Fernández's efforts.

"This is not the way we have ever done political fundraising," Katz said. "We do not ask for postdated checks. We certainly would not authorize anyone in any way to collect checks before we have opened a campaign or a campaign account."

Katz said none of Penelas' advisors knew what Fernández was doing.

"What happens is that people who think they are helping do things unbeknownst to us," he said. "That kind of violation of the campaign finance regulation is not invited, not condoned and not wanted by Alex Penelas. We will follow the rules. We will follow every bit of the federal election law."

Fernández said he has spoken to Penelas several times about the mayor's desire to run for the Senate. He offered conflicting statements, however, about why he asked Valdes to start collecting checks for Penelas' Senate campaign.

"Alex is gearing up for a campaign," he said, "and I was asked to work toward that effort."

Who asked?

"I have friends who are political, and I said I would raise some money for him," he said.

A RETRACTION

Asked again for the names of those who requested his fundraising help, he responded: "I retract that I was asked. I am doing it because I want to help the man. I was not asked by anyone to collect these checks."

Neither Fernández nor Valdes would say how much money they raised for Penelas last week, but Katz said it doesn't matter.

"We will not be accepting those contributions," he said. "Absolutely not."

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Jim DeFede

Posted on Tue, Apr. 08, 2003

Was helping hand from strong arm?

Christmas came early for some of the doctors and executives of CAC CarePlus Medical Centers. Last week, employees who were pressured to write checks for Alex Penelas' Senate campaign were given those checks back.

"Everyone was very pleased," said one employee.

Company executives had sent an e-mail last month soliciting money for Penelas' campaign before Penelas had even opened a campaign account. The letter told employees that the company's owner, Michael Fernandez, wanted "an accounting" of everyone who gave and those who did not.

"To tell me that a list was going to be kept, and that we are going to know who did and did not contribute, it was just too much strong-arming for me," the employee said. "It's just not American. The election process is very sacrosanct."

EXPERTS WEIGH IN

Experts in campaign finance law say the efforts by CarePlus and its executives on behalf of Penelas, the Miami-Dade mayor, may have violated federal rules, particularly those that prohibit using corporate resources to raise money for candidates.

The Herald has learned CAC CarePlus made a similar push for campaign contributions last year on behalf of U.S. Sen. Bill Nelson.

In a letter to company employees dated April 24, 2002, Fernandez applauded Nelson as "the only voice representing us in Washington, D.C., on the CAC fight with Medicare." He also thanked Nelson for interceding with "regulators" to persuade them to keep the clinics open.

"Now it's time for us to help Senator Bill Nelson," he wrote.



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The 12 clinics, originally owned by Pan American Hospital, briefly closed in December 2001 for financial reasons. The clinics, which cater primarily to elderly Cuban Americans, reopened after Pan American sold them to Fernandez in a deal negotiated in Nelson's office. At the time, Ponchar said he learned much because many constituents were affected by the closing.

ROLE NOT KNOWN

But it was not previously known that Nelson may have also played a role.

In raising money last April for Nelson, Fernandez asked for a donation of between \$1,000 and \$2,000. The letter states, "this is not a requirement, but a request." The letter also instructs the employees to mail the checks to Fernandez at the company's main office by May 1, 2002.

Two employees who received the letter said despite the language that this was only a "request," supervisors at the clinics told them they were expected to donate.

"The administrator told me that a list was going to be kept of who did and did not contribute because Michael had asked for a list," one of the employees told me.

A review of Nelson's campaign finance reports reveals that on May 20, Nelson, who is up for reelection in 2006, received a bundle of approximately 48 checks totaling more than \$50,000 from CarePlus employees and other companies and individuals related to either CarePlus or Fernandez.

Fernandez did not return my phone calls.

REVIEWING THE RECORDS

At the request of The Herald on Monday, Dan McLaughlin, a spokesman for Nelson in Washington, started researching exactly what efforts the senator or his staff may have made on Fernandez's behalf. McLaughlin was still pulling information together Monday evening, but said members of the senator's staff in Florida remember Fernandez was "flat out amazed and happy" at the help Nelson's office was able to provide and became a "big Bill Nelson supporter" afterward.

"We try to give that same sort of feeling to everyone," he said.



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Wednesday, July 23, 2003

B

Many Penelas donors linked to firm's chief
BY PETER WALLSTEN AND JASON GROTTO
pwallsten@herald.com

Miami-Dade Mayor Alex Penelas, whose campaign pledged to reject contributions for his U.S. Senate campaign resulting from a controversial e-mail appeal sent to employees of a South Florida healthcare firm, took tens of thousands of dollars from people associated with the company. A Herald analysis of campaign finance records shows that employees, relatives and business associates of Michael Fernandez, owner and chief executive officer of CarePlus Medical Centers Inc., donated at least \$68,000 to Penelas' campaign -- all connected to the same day in May that Fernandez hosted a fundraiser at his home.

Penelas' campaign had pledged not to take contributions resulting from Fernandez's initial fundraising appeal, made in an e-mail by Fernandez colleague Bert Valdes to company physicians and executives.

The e-mail cited potential reforms by Penelas "that could represent opportunities for companies like ours to increase revenue." The e-mail asked that each person donate \$1,000 to the mayor's Senate campaign.

Fernandez served on a task force created by Penelas to study ways to improve healthcare access for the poor, in part by using private providers.

The practice of "bundling" campaign contributions through a company and its employees has drawn fire from campaign finance watchdogs, who say the bundling allows candidates to raise large sums despite strict limits on individual contributions.

"At best, it's the legal way around the ban on corporations giving," said Larry Noble, executive director of the Center for Responsive Politics in Washington and a former Federal Elections Commission general counsel. "It allows them to get credit for delivering the contributions."

When Herald columnist Jim DeFede wrote about the Careplus e-mail in March, Penelas campaign officials distanced themselves from Fernandez's efforts and pledged to return any money raised by the e-mail. Fernandez pledged that his firm would not benefit from the task force recommendations, and the issue appeared

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dead.

On Tuesday, the mayor's campaign staff said the contributions revealed in The Herald study were the result of the Fernandez fundraiser -- not the controversial e-mail.

'LETTER OF THE LAW'

"Any and every dollar the mayor raises for his campaign will be by the spirit and the letter of the law," said Ron Sachs, a Penelas spokesman.

Fernandez could not be reached for comment late Tuesday.

Penelas is running for the Senate seat that would be vacated by Sen. Bob Graham, who is running for president.

The Herald analysis is based on his first fundraising report since opening a campaign account in April. Penelas' \$1-million fundraising performance during April, May and June impressed potential supporters and positioned him as a key rival to U.S. Rep. Peter Deutsch of Pembroke Pines, who has stockpiled millions in anticipation of the race.

The crowded field of Democratic contenders also includes U.S. Reps. Allen Boyd of Monticello and Alcee Hastings of Miramar, along with former state Education Commissioner Betty Castor.

The Fernandez contributions are sure to draw the ire of Penelas' opponents, specifically Deutsch, who has made clear his intention to run an aggressive campaign targeting the Miami-Dade mayor.

Indeed, Deutsch filed a Federal Elections Commission complaint late Tuesday about the Careplus contributions based on research by his own staff, citing the earlier e-mail and alleging that donations were illegally coerced. Deutsch's complaint cites \$49,000 in Careplus-related money given to Penelas.

LONGTIME SUPPORTER

Penelas' finance director, Fred Menachem, said Tuesday that Fernandez is a longtime supporter of the mayor whose interests are personal, not business related.

Menachem said that the earlier e-mail did not violate the law, but that the campaign did not accept any contributions resulting from that initial appeal -- only from the May fundraising event.

"Did Mike put together the fundraiser and ask people to attend? Absolutely," Menachem said.

"Did he collect the checks ahead of time and bundle them to the campaign? No,"

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Menachem said.

To campaign finance watchdogs, any effort by an individual executive to raise tens of thousands of dollars circumvents newly strict federal laws designed to limit the influence of special interests.

Individuals are limited to donations of no more than \$2,000 to Senate candidates for a primary, and then \$2,000 more for the general election.

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Monday, Oct 20, 2003

Jim DeFede

Posted on Thu, Apr. 03, 2003

JIM DEFEDE/COMMENTARY

Did fundraising break the rules?

The good people of CarePlus Medical Centers are more than just healthcare professionals. Apparently they're psychics as well.

Last month, corporate executives of CarePlus sent a memo to its senior employees, soliciting a \$1,000 contribution from each of them for the Alex Penelas for Senate Campaign. The employees were told to postdate the checks April 2.

Lo and behold, when that magic day rolled around, Penelas officially opened his Senate campaign account.

Coincidence or collusion?

Last week I asked Bert Valdes, vice president of CarePlus and the man who sent the solicitation letters to the employees, why he wanted the checks postdated.

"That is a good question," he replied. "I don't know why."

Since first writing last Sunday about the company's efforts for Penelas, I've spoken to a number of lawyers and other experts in campaign finance law who say CarePlus executives may have violated several rules and regulations.

One problem is that in the memo to employees, CarePlus executives stated that the checks for Penelas would be collected by company officials.

"That is called bundling, and it is a prohibited activity," explained Larry Noble, who was the general counsel of the Federal Election Commission for 13 years and is currently the executive director at the Center for Responsive Politics in Washington, D.C.

PURPOSE OF BUNDLING

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Bundling of individual checks, to be presented to a candidate from someone clearly representing an interest group or a company, is used to evade the law's prohibition of corporate donations and limits on PAC contributions.

"That very well may be a problem," Noble said. "The amount of money they are spending on this operation, the staff time of writing this solicitation and gathering the checks, is a prohibited corporate contribution."

One question unresolved is the connection between CarePlus executives and Penelas. Did Penelas, either directly or through intermediaries, ask company President Michael Fernandez or other executives to start raising money for the Senate campaign before the campaign account was even opened?

Penelas spokesman Ric Katz said no one connected to the mayor authorized anyone at CarePlus to start raising money. Katz said the money raised by CarePlus would not be accepted by Penelas.

Last week, Fernandez admitted that he had been asked to help Penelas. When he was pressed for details, he said: "I retract that I was asked. I am doing it because I want to help the man. I was not asked by anyone to collect these checks."

Noble said the arrangement appears suspicious. "As a former general counsel for the FEC who used to investigate these sorts of things, I would say that this is clearly something that has to be looked into," he said. "If they were saying postdate the checks to April 2 and on April 2 he opens up his campaign account, that to me is evidence of coordination."

UPHILL STRUGGLE

Given the numerous scandals over the years inside county government, Penelas is already facing an uphill struggle to convince voters in Central and North Florida that he isn't shady or crooked. Therefore, any investigation examining the links between Fernandez and Penelas could cause problems for Penelas at the outset of his campaign.

"It is more serious in the sense that it now draws the candidate into this," Noble said. "So whatever illegal corporate activity that has gone on, if in fact the candidate was involved, then the candidate could be hit for that as well. Often in these schemes, the claim is that the candidate didn't know anything about it. The corporation went off on their own. But here I think you have some prima facie evidence that there was at least some coordination."

Noble said either the Federal Election Commission or the U.S. attorney's office would have jurisdiction, but in the vast majority of cases such as this, the FEC would handle the matter. A spokesman

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for the FEC in Washington declined to comment.



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Deutsch files FEC complaint over Penelas fund-raising

Thursday, July 24, 2003

By KEN THOMAS, Associated Press

MIAMI — U.S. Rep. Peter Deutsch filed a complaint Wednesday with the Federal Election Commission alleging that Democratic rival Alex Penelas illegally coerced donations from a South Florida health care company in their U.S. Senate race.

The complaint by Deutsch, D-Pembroke Pines, accuses the Miami-Dade County mayor of receiving at least \$49,000 in illegal contributions from 41 employees and their spouses of CarePlus Medical Centers Inc., of Coral Gables. Both are competing for the seat of Sen. Bob Graham, who is running for president.

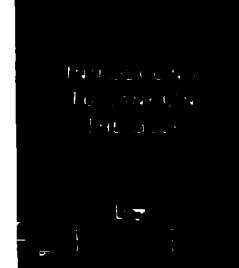
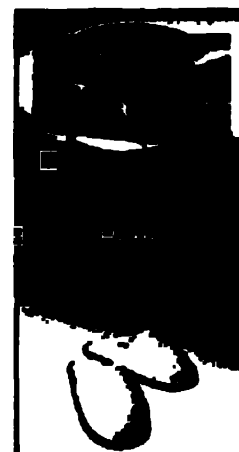
A Miami Herald columnist reported March 30 that a CarePlus executive sent an e-mail to company physicians and executives asking for donations of \$1,000 to Penelas' campaign, which had not yet opened a campaign account.

Penelas' campaign told the newspaper that it would reject contributions resulting from the e-mail. But a review of Penelas' most recent campaign finance report in Wednesday's Herald found the mayor's campaign received \$68,000 in contributions from employees, relatives and business associates of the firm.

Ryan Hampton, Deutsch's finance director, called the case a "clear violation" of the 1971 FEC law.

"It's clear from the Penelas campaign statement of March 30 that they were aware of the possible coercion being exercised on Penelas' behalf and despite that knowledge the mayor chose to accept these questionable contributions after telling the press through a spokesperson that he would not," Hampton said.

The mayor's campaign staff said the contributions were the result of a May fund-raiser held by Michael Fernandez, the firm's owner and chief executive, and not connected to the e-mail. They said they do not plan to



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~~return the contributions.~~

Ron Sachs, a Penelas campaign spokesman, said the mayor requires anyone raising money for his campaign to follow the "spirit and the letter of the law" and criticized the Deutch campaign for releasing the complaint to reporters before the mayor's campaign had learned of the filing.

Deutch has "embraced a strategy of slash and trash as opposed to sharing a vision and that will not sell to voters in a primary or a general election," Sachs said.

Penelas campaign officials said every person planning to hold a fundraiser for him receives a sheet outlining federal regulations on the contributions and events. The sheet concludes with an underlined sentence: "Please do not send out any invitations without prior approval from the campaign."

The e-mail by Fernandez colleague Bert Valdes in March mentioned potential reforms by Penelas "that could represent opportunities for companies like ours to increase revenue." Fernandez had served on a task force created by Penelas to study ways of improving health care access for the poor, in part by using private providers.

Fernandez told the newspaper in March that his firm would not benefit from the task force recommendations. He did not return a phone call Wednesday.

In the e-mail, Valdes wrote that the deadline for contributing to the campaign was March 28 and said the checks "must be dated April 2, 2003, or later." Penelas filed his papers allowing him to begin raising money for the campaign on April 2.

The e-mail added: "All physicians, large vendors and executive level staff will be expected to donate" and noted that Fernandez "has asked for an accounting of the individuals that donate and those that did not."

Valdes told the Herald in March that the recipients of his e-mail understood that making a contribution was voluntary. He was on vacation Wednesday and did not return a phone message left at his office.

Kenneth A. Gross, a Washington-based campaign finance lawyer retained by the Deutch campaign, said it was difficult to draw conclusions on whether a violation had occurred. Gross served as an associate general counsel and the FEC's head of enforcement from 1980 to 1986.

"There's smoke. I don't know how much fire there is," Gross said. "It really needs to be looked into whether there was any coercion."

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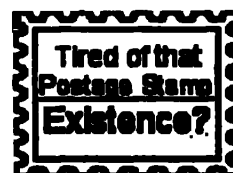
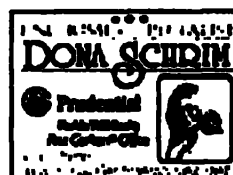
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The FEC complaint was the latest skirmish in the growing feud between Deutsch and Penelas. Deutsch has accused Penelas of hurting the Gore-Lieberman presidential ticket in 2000. Penelas backers have accused the congressman of misappropriating and bullying nearly a year before the August 2004 primary.

Other Democrats in the race have called for a truce and worry that it reflects poorly on the party and could hamper their chances of holding Graham's seat.

Bob Doyle, a spokesman for U.S. Rep. Allen Boyd, D-Monticello, said their campaign found "it distressing that the topic is even up for discussion."

The field also includes former state Education Commissioner Betty Castor of Tampa and U.S. Rep. Alcee Hastings of Miramar. None of the Democrats plan to run if Graham decides to seek re-election.

Through the latest fund-raising quarter ending last month, Deutsch had more than \$3 million on hand for the race and Penelas had raised about \$1.1 million.

The Republican field includes U.S. Rep. Mark Foley of West Palm Beach, former U.S. Rep. Bill McCollum of Longwood and House Speaker Johnnie Byrd of Plant City. State Sen. Daniel Webster of Winter Garden and U.S. Rep. Dave Weldon of Palm Bay are considering the race.

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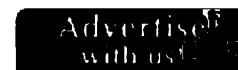
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