

[ADMINISTRATIVE ORDER NO. 59, February 04, 2003]

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON DR. FERNANDO A. MELENDRES, EXECUTIVE DIRECTOR OF THE LUNG CENTER OF THE PHILIPPINES (LCP), WITH FORFEITURE OF ALL HIS RETIREMENT BENEFITS AND DISQUALIFICATION FROM RE-EMPLOYMENT IN THE GOVERNMENT SERVICE.

Respondent Executive Director Fernando A. Melendres of the Lung Center of the Philippines (LCP) is the subject of a complaint filed by LCP's employees for procurement of presentation banner without public bidding completed with falsification of public documents; falsification of documents in the hiring of an architectural consultant; violation of auditing rules on the drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects; and unauthorized implementation of the reorganization plan without the required approval of the LCP's Board of Trustees.

The fact-finding committee created by the LCP's Board of Trustees submitted a report finding a prima facie case against respondent Executive Director Melendres and recommending the filing of formal charges against him. In turn, the Board of Trustees approved The said finding and recommendation, transmitted the report and the records of the case to this Office, and further recommended to the President the placing of Executive Director Melendres under preventive suspension during the pendency of the investigation against him.

In view of the foregoing and pursuant to Executive Order (E.O.) No. 12 dated April 16, 2001, Executive Secretary Alberto G. Romulo, by authority of the President, issued Administrative Order (A. O.) No. 39 on September 11, 2002 ordering the preventive suspension of respondent Executive Director Melendres for ninety (90) days and directing the Presidential Anti-Graft Commission (PAGC) to conduct a formal administrative inquiry against him for the alleged commission of the aforementioned acts that if true are clearly disadvantageous to the government and violative of Civil Service laws and regulations.

On October 22, 2002. a complaint-affidavit dated October 21. 2002 was filed before the PAGC by LCP's employees, namely, Sullian Sy Naval, Theresa M. Alcantara, Jose Pepito M. Amores, Vincent N. Balanag. Jr., Guillermo G. Barroa, Jr., Rey A. Desales, Norberto A. Francisco. David F. Geollegue, Benilda B. Galvez, Luisito F. Idolor. Victoria C. Idolor, Buenaventura V. Medina. Jr., Newell R. Nacpil, Raoul C. Villarete, and Guilicmo Madlang-awa, charging respondent Executive Director Melendres with commission of acts disadvantageous to the government, violations of the Civil Service Rules and Regulations, and incapacity to manage and administer the affairs Of LCP.

In its investigation report submitted to this Office on January 9, 2003, PAGC states

the charges against respondent Executive Director Melendres as follows:

"I

Procurement of presentation banner without public bidding completed with falsification of documents.

1.1 On the first offense, the respondent procured/purchased a presentation banner without going through canvass as required by law. Respondent Chose Luis and Associates (the maker of the presentation banner) as an exclusive distributor without any reason or justification for such. The kind of work required for the presentation banner was not an ultra special work that could only be done by one contractor that might merit the exclusive distributor excuse used by the respondent.

1.2 Worse, the respondent tried to cover his tracks by falsifying a certification of canvass. The falsity is shown by the fact that the alleged canvass was made only after the delivery of the presentation banner. The delivery of the banners was made on 27 November 2001 while the purported canvass was done on 03 December 2001.

1.3 One of the complainants, Jose Pepito Amore ("AMORES) found the illegal procurement of the presentation banner upon inspection of the documents for the procurement. AMORES is a required signatory for the approval of the procurement. On perusal of the documents, AMORES noticed that the respondent erased his name as a signatory on the disbursement voucher. Looking at the photocopy of the back of the aforementioned voucher, there clearly was an erasure performed by the respondent to override AMORES' authority and preclude AMORES' knowledge of the illegal procurement as well.

1.4 There was also a falsification done by the respondent on the purchase order dated 21 December 2001 for the presentation banner. On the carbon copy of the purchase order for the banner, it indicates the procurement method as "CANVASS" In a typeface clearly different from the top. The photocopy of the reverse side of said purchase order clearly indicates the remark "Exclusive Distributor". The respondent, realizing that this work will not qualify as an "exclusive distributor" changed "Exclusive Distributor" to "Canvass".

1.5 The respondent is indeed guilty of illegally procuring the presentation banner by conforming to a quotation dated 26 November 2001 by Luis and Associates and received by the respondent on 27 November 2001 nearly a month before the purchase order. Add to that, a statement of account from Luis and Associates dated 05 December 2001 received by the respondent on the same date indicating a bill for a presentation banner already DELIVERED to the LCP. The quotation and statement of account of Luis and Associates were received by the respondent before the purchase order dated 21 December 2001.

II.

Falsification of documents in the hiring of architectural consultant in the person of Architect Federico R. Medina.

2.1 There are two (2) Architectural Service Agreements entered into by the respondent for LCP with Architect Federico R. Medina. The first agreement dated 01 June 2000 was for seven month commencing 01 June 2000 to 31 December 2000. This agreement was antedated by the respondent as evidenced by the fact that the Book Number of the Notary has a correction from "VII to "X". If said document truly belonged to Book X of the Notary Public, the same would have not included any surplusage "II" needing any correction. Respondent is a signatory to the contract and for such important matter, he cannot invoke ignorance nor pretend not to know the circumstances attending the execution of the document.

2.2 On 31 May 2001, respondent issued Center Order No. 152, s. 2001, extending the services of Architect Medina for the period from 01 June 2001 to 31 December 2001. The second agreement dated 01 January 2001 was for a period of one year commencing 01 January 2001 to 31 December 2001 and was notarized on 30 July 2001. There is an evident irregularity when the two aforementioned documents are read together. Respondent antedated the second agreement,

2.3 Respondent falsified the second agreement when he realized that his Center Order 152 could not legally bind the parties. So, respondent falsified the second agreement to make it appear that the agreement was for the whole year of 2001. What makes the falsification more strikingly evident is that the second agreement was notarized on 30 July 2001. The falsification consists in the falsity of the date of execution, the evident truth being that it was signed and executed on 30 July 2001 and not 01 January 2001.

III.

Violation of auditing rules on the drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects.

3.1 For the construction of the 2nd floor, T-Block building, an infrastructure project of the LCP, the respondent created special petty cash advances through the issuance of several Center Orders. These Center Orders are violations of Section 174 (g) of the Government Accounting and Audit Manual ("GAAM"). The provision reads: "No cash advance shall be granted on account of infrastructure or other undertakings on a project

3.2 The respondent used these cash advances and special petty cash funds for the constructions of the 2nd floor, T-Block Building in violation of the GAAM. The amounts authorized for special cash funds/cash advances under the abovementioned Center Orders were big or substantial, exceeding the maximum authorized/allowed by pertinent

rules and regulations and practice. Under item 4.3.2 of COA Circular #97-092 dated 10 February 1997, it states:

"Payments out of cash advances shall be allowed only for amounts not exceeding P15,000 for each transaction, except when a higher amount is allowed by law and/or with specific authority by the Commission on Audit. Splitting of transactions to avoid exceeding the ceiling amount shall not be allowed."

It may be noted that the expenditures incurred via the supposed authority granted or provided in the particular Center Order issued by respondent are in large amounts exceeding the P15,000 ceiling as enumerated above.

3.3 There is also a violation of the public bidding law in the issuance of the various Center Orders. Under paragraph no. 4.5.1 of Executive Order No. 262 as amended by Executive Order 40, series of 2001, it states:

"For contracts to be bided costing more than One Million Pesos, pre-bid conferences shall be conducted by the government to clarify and/or explain any of the requirements, terms and conditions as specifications stipulated in the bid documents"

3.4 The construction of the 2nd floor of the T-Block Bldg. of the LCP entailed an expenditures of more than one million pesos, thus it should have been subjected to public bidding, which was not done in this case. To avoid or circumvent the above-cited provisions of E. O. 262, as amended by E. O. 40, there was a continual and series releases and utilization of petty cash funds/cash advances for the construction project. Consequently, the public bidding requirement for big infrastructure projects was violated in this instance.

IV.

Unauthorized implementation, of a reorganization plan unapproved by the Board of trustees.

4.1 Respondent issued numerous Center Orders during the year 2000 and 2001, which reorganized the organizational setup of LCP, caused the transfer/movements of employees and created various committees. In doing so, there is no showing that the re-organization/personnel movements are in accordance with Rationalization and Stream lining Plan of the Department of Health {"DOH"} and approved by the Department of Budget and Management ("DBM"), in accordance with Executive Order No. 102, and Malacanang Memorandum Circular No. 62, s. 2000. There was no presentation of any factual or legal basis to justify personnel movements and reorganization.

4.2 The respondent had placed hospital staff that he can control al the proper place to conspire with him to carry out anomalous transactions. In Center Order 107-A, S. 2000, the respondents had removed the financial responsibilities of AMORES and conferred them to Albilio C. Cano

("Cano"). What was once under the control of AMORES was now with one of his people. To further his plan to mask his criminal intentions, respondent in Center Order 130-A, S. 2001 gave more financial responsibilities to CANO and another staff close to him, Angeline A. Rojas ("ROJAS"). The responsibility/authority transfer was part of grand scheme to defraud LCP. The respondent placed his people in key positions and they were to directly report to him. The respondent in effect abolished the inherent check and balance of the original set-up. The respondent made this reorganization without the required approval of the Board of Trustees ("BOI") of the LCP.

V.

Unlawful/Excessive Availments of Gasoline Expenses,

5.1 The respondent, as Director of the LCP, uses a Toyota Corolla vehicle with Plate No. SEF-760 for his official functions. However, from 21 December 2001 until 03 January 2002 or for 14 days, respondent availed of a total of 181.53 liters of gasoline, valued at Php 3,0001.13. Thus, respondent averaged 12.96 liters each day within the 14-day period, or Php 214.36 per day. However, the averages become more suspicious considering the intervening holidays from 21 December 2001 to 03 January 2002, where respondent is not expected to utilize the aforesaid vehicle or the usage thereof is unlikely.

5.2 In respondent's availment of the gasoline used, he never submitted any trip ticket to support that indeed trips made during the holiday period were official businesses. This action is in disregard of the usual procedures of the LCP.

VI.

Payment of the Cellular Phone Bills of Respondent using LCP funds.

6.1 Respondent used funds of the LCP to pay for his cellular phone bills. There is no indication that all the calls made were for government related purposes. The phone bill of the respondent for the period of 13 June 2001 to 12 July 2001 shows current charges totaling P1,331.00. The respondent has used LCP funds to pay for his personal calls through disbursement supported by voucher no. 0108-107 dated 13 August 2001. The respondent did it a second time for his phone bill for the period 13 July 2001 to 12 August 2001 with current charges of P 1,410.99. The respondent likewise had his personal bills paid with LCP funds [as] evidenced by voucher no. 0109-012 dated 03 September 2001. Telephone Number (02) 284-1479 repeatedly appeared in Globe Phone Bill, which is the Phone Number of Ms. Gigi Lorenzo, his alleged mistress,

VII

Awarding if Contract of Lease for Respondent's own and direct benefit.

7.1 Respondent, on behalf of the LCP, executed a Contract of Lease dated