

**MALACAÑANG**  
**Manila**

**ADMINISTRATIVE ORDER NO. 59**


**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 complexed 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 Guillemo 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 complexed 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.

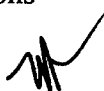
- 3.1 For the construction of the 2<sup>nd</sup> floor, T-Block building, an infrastructure project of the LCP, the respondent created special petty cash advances through the issuance of several Center Orders. These Center Orders are violations of Section 174 (g) of the Government Accounting and Audit Manual ("GAAM"). The provision reads: "No cash advance shall be granted on account of infrastructure or other undertakings on a project basis".
- 3.2 The respondent used these cash advances and special petty cash funds for the constructions of the 2<sup>nd</sup> 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 2<sup>nd</sup> 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 200 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 Streamlining 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 Malacañang 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 at 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 ("BOT") 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.

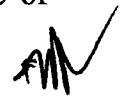
## VI.

### 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 P1,410.99. 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 01 February 2002, wherein he accorded to himself the privilege to lease a room at LCP's Doctor's Clinic, to the prejudice of the government and demoralization of the physicians who have been unjustly denied the privilege of engaging in the private practice of medicine.
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7.2 Worse, respondent committed another falsification when he signed the same supposedly in the presence of complainant AMORES, CANO and Atty. Natividad Ramos who were not truly present, as evidenced by the Contract which AMORES photocopied from the original on the date he signed the document.

## VIII.

### Unlawful Award of the Sports Consultant Services Agreement.

8.1 Respondent, again, on behalf of the LCP entered into a Sports Consultant Services Agreement with a certain Mr. Godfrey S. Monsod. There in is no justification that LCP absolutely needs the services of such a consultant. Moreover, there is no showing whatsoever that respondent was authorized to secure the services of such consultant. Worse, there is no indication that Mr. Monsod is best qualified to be such a consultant and if his fee is reasonable under the circumstances. At present, Mr. Monsod is visible organizing rallies for Dr. Melendres' cause, obviously [a function] not detailed in his original job description.

## IX.

### Issuance of Center Order No. 155-A, S. 2001.

9.1 In Center Order No. 155-A, S. 2001, respondent without basis in law, skirted the public bidding requirement for purchases or acquisitions of "unit or systems" valued in excess of P1,000,000.00. Apart from being vague and easily subject to circumvention of the requirements of public bidding, there in no reasonable basis for the aforesaid Center Order. Simply put, the memorandum paves the way for the acquisition of a "system" which may consist of various independent components, where each component may be valued for less than P1,000,000.00 thus exempting and circumventing, an otherwise purchase totally exceeding P1,000,000.00 from public bidding.

## X.

### Issuance of Center Order No. 55, S. 2000.

10.1 Center Order No. 55, s. 2000, dated 14 April 2000, respondent granted Representation and Transportation Allowances ("RATA") to Dr. Roberto Montevirgen, who was then designated temporarily as

officer-in-charge of the Pharmacy. However, respondent caused the payment of the RATA as early as March 2000, or before the actual appointment. Worse, RATA was paid to Ms. Basobas, being the Chief Pharmacist. Thus, RATA was paid twice to the "Head of the Pharmacy Division", one to the designated Officer-in-charge, Dr. Roberto Montevirgen and one to the Plantilla Chief Pharmacist, Ms. Heidi Basobas.

## XI.

### Multiple Demotions of Complainant Jose Pepito Amores.

- 11.1 On 12 July 2001, respondent created a new organization set-up, through Center Order 255, S. 2001, wherein he created the five (5) services namely: 1) Administrative and Ancillary; 2) Finance; 3) Medical; 4) Nursing; and 5) Corporate Services, which are headed by five (5) persons/Deputy Director. As already stated, the new organizational set-up was not approved by the DOH and the DBM in violation of E. O. No. 102 and Malacañang M. C. No. 62, s. 2000.
- 11.2 On the other hand, the DBM approved an organizational set-up of LCP with two (2) services under two (2) Deputy Directors, Namely: 1) Medical Services and 2) Hospital Support Services. With Center Order No. 255, S. 2001, complainant AMORES was demoted both in rank and function. Otherwise stated, other personnel were promoted to the same level positions of Deputy Director AMORES without any indication that proper deliberations were conducted or government approvals secured. It must be further stressed that AMORES' appointment as Deputy Director included specific functions attendant to said position.
- 11.3 However, with the aforesaid Center Order, it is manifest in the structural diagram that in implementing the said Order, the Nursing Service and Finance Service (Accounting, Budget, Billing, Credit and Collection) were removed from the supervision of the Office of the Deputy Director for Hospital Support Services. Worse, respondent's Center Order No. 107-A, S. 2000, removed from AMORES the supervision over the following divisions: 1) Budget and Accountancy; 2) Billing and Medicare; 3) Cash; 4) Pharmacy; 5) Procurement, Property and Supply Division, all in violation of the DBM approved set-up. Prior thereto in Center Order 55, S. 2000, respondent placed the Pharmacy Division under the supervision of the Deputy Director for Medical Services, in violation of the DBM approved set-up.



11.4 In respondent's Memorandum No. 12-A. S. 2000, he [AMORES] was removed as member of the Executive and Finance Committee. The entire foregoing is in derogation of the responsibilities and functions detailed to complainant AMORES' appointment. The position of Deputy Director for Hospital Services became in reality a futile position. While the plantilla position of Deputy Director could not be taken away from Dr. Amores legally, he became a titular head without function and power. Worse, no explanation was forwarded to him in person or in writing except for the successive diminution of functions. Thus, all the foregoing constitutes acts of multiple demotion as well as humiliation.

## XII

### Questionable Appointment.

12.1 Respondent appointed Doctors Dina B. Barroa, Jr., Camilo C. Pada, and Joseph Leonardo Z. Obusan to their current positions in the absence of any: 1) announced vacancy in the plantilla positions to which the aforesaid persons were appointed; 2) list of applicants to the said positions; and 3) deliberations from LCP's Medical Staff Accreditation Committee.

12.2 After the appointment of complainant Barroa, respondents issued a letter dated 12 March 2002 terminating complainant Barroa's services for the simple reason that his temporary appointment expired despite complainant's Barroa's long years of service and permanent status prior to his temporary designation. Moreover, complainant Desales' transfer as head of Thoracic Surgery and Anesthesia Department, to head of Out-Patient Department constitute a demotion in function, as the same was done without factual basis. Appointments are whimsical and even glaringly violate the rules for selection of such key positions in the Corporation.

## XIII.

Undue discrimination in the grant of the privilege to the practice of medicine and in other instances.

13.1 Respondent issued Memoranda Nos. 01-A and 2, s. 2002 prohibiting full time salaried physician of the LCP from conducting private clinics during office hours without specific permission from him or

from the Secretary of Health. Office hours are from 8:00 am to 5:00 pm Monday to Friday.

- 13.2 The aforementioned memorandum clearly disregards and violated the VERY ESSENCE of the Administration Order 172, s. 2001, 2<sup>nd</sup> paragraph [of] which states...

"As an incentive and in recognition for (sic) their commitment to remain as members of [the] hospital staff for a longer period [and] for continuous improvement of the health care delivery service of the faculty, PRIVATE PRACTICE is allowed."

The instantaneous curtailment of privileges of the selected doctors was without reason, when since time immemorial, private practice was allowed and contracts to use facilities of the hospital for said private practice were given out. Discrimination was evident as private practice was ALLOWED to a number of FULL TIME physicians (Montevirgen, Diaz, Pada, Mendoza, among others) who have not complained against the respondent.

- 13.3 AMORES requested from respondent that he be allowed to engaged (sic) in private practice within LCP. Respondent had not acted on said request. At the same time, respondent has granted Doctors Dina V. Diaz, Jaime M. Mendoza, Roberto M. Montevirgen, Camilo C. Pada, the privilege to engage in private practice during office hours from 3:00pm to 5:00pm, even during weekdays, as evidenced by the Contract of Lease for the rooms for [the] use of the aforementioned doctors.

- 13.4 Worse, as already stated in paragraph 7 of this complaint, respondent granted unto himself the right to lease a room thereby promoting his interest over and above his colleagues, to the detriment of the service.

- 13.5 The discriminatory conduct of respondent is all too manifest that complainants herein had to seek the intervention of the Honorable Secretary of Health Manuel Dayrit in order to facilitate/grant their request to be allowed to the private practice of medicine. Respondent has gone to the extent of posting the name of the complainants in public and has barred access to the doctor's office for the most trivial of reasons causing humiliation and undue moral damage to some of the complainants.

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#### XIV.

Pending cases with the Ombudsman.

14.1 The respondent has several cases pending with the Office of the Ombudsman regarding the act[s] in relation to his Office, which have been deemed criminal. The table below is a list of the pending cases: (Note: These cases are not part of this complaint but are mentioned here to show poor governance and irregular/anomalous acts of the respondent.)

<b>Complainant</b>	<b>Case No.</b>	<b>Offense</b>
Amores, et al	CC-02-0428-G	Malversation and falsification
Amores	CC-02-0567-1	Illegal Procurement
Genoveva Hipol	CA-02-0076-C	Pending Administrative Adjudication
Genoveva Hipol	CA-02-0077-C	Pending Administrative Adjudication
Guillermo Madlang Awa	CA-02-0078-C	Pending Administrative Adjudication
Guillermo Madlang Awa	CC-02-0113-C	Pending Investigation
Guillermo Madlang Awa	CC-02-0887-C	Pending Administrative Adjudication

#### XV.

Immorality.

15.1 The respondent does not only have criminal intentions, he is immoral as well. The respondent is legally married to Dr. Eufrocenia Angeles-Melendres. While his marriage still subsided, the respondent has sired a child with his mistress, a Gigi Facundo Lorenzo, a former LCP nurse who has been living with the respondent in his house at Antipolo. A government officer and being a head of an important institution like the LCP should be a role model and a responsible citizen. Yet, the respondent has been the opposite. Attached, as Annex "HH" is a copy of the NSO certified birth certificate of a Ma. Victoria Facundo Lorenzo born on 11

appointed relatives of his current mistress, Ms. Gigi Lorenzo. To name a few:

- a) Mr. Leonardo Lorenzo – brother of Ms. Lorenzo, assigned to the Dietary Department;
- b) Ms. Shirley Bautista-Lorenzo – wife of Leonardo, assigned to the Dietary Department; and
- c) Ms. Daisy Lorenzo – sister-in-law of Ms. Gigi Lorenzo, assigned to the cashier.

## XVI.

### Drug Abuse (DEMEROL)

16.1 The respondent aside from being anomalous in his way of leadership and immoral in his personal life is also a drug dependent abusing the drug DEMEROL. He has coerced complaint-doctors, Dr. Idolor and Dr. Alcantara to issue prescriptions for the aforementioned drug way beyond the normal therapeutic limit. The respondent has admitted using the drug and undergoing detoxification for it during the DOH Fact Finding Committee hearings.

16.2 Attached as Annex "II" is an affidavit of one Teofilio Guevarra, a driver employed at the LCP. The affiant attested to the fact that he assisted on (sic) the respondent in injecting the drug demerol into his arm. Also attached as Annex "JJ", is a handwritten note by Dr. Nelia Cortes Maramba. Dr. Maramba was asked during the hearings of the Fact Finding Committee of the DOH investigation [of] the respondent to write what drug the respondent abused in the detoxification process of the respondent (sic)."

Finding sufficient basis to commence an administrative investigation, PAGC issued an order, dated November 8, 2002, requiring respondent Executive Director Melendres to file his counter-affidavit or verified answer to the complaint within a non-extendible period of ten (10) days from receipt thereof.

On November 18, 2002, respondent Executive Director Melendres filed the required counter-affidavit together with the entry of appearance of his counsel, Atty. Augusto M. Macam, in the PAGC. Relevant portions of the said counter-affidavit are quoted by PAGC in its investigation report as follows:



- A. "On the procurement of presentation banner without public bidding complexed with falsification of documents.

The banner in question was to be used during the inauguration of a Lung Center building. The upper portion was a painted picture of the President and immediately below the picture were the following words:

"Flagship project of Her Excellency President  
Gloria Macapagal Arroyo with loving concern for the  
Filipino people."

Below these words was the painted picture of the Lung Center.

- The mode of the procurement was originally a negotiated contract. The justification for the negotiation was in accordance with Rule 35.1.5(c) of the Implementing Rules and Regulations (IRR) of E.O. 40 s. 2001, which read:

"Whenever the goods are to be used in connection  
with a project or activity which cannot be delayed  
without detriment to the public service."

Owing to the unfamiliarity of procurement officials on the various modes of procurement prescribed by said E.O. 40, which was promulgated only in 2001, the mode of procurement was stated in Purchase Order (PO) as "Exclusive Distributor", referring to the supplier of the banner and had the same inadvertently approved. Upon the advice of more knowledgeable officials on the new procurement law (E.O. 40), that exclusive distributorship was not appropriate to justify the negotiated procurement of the banner and aware that the thrust of audit of the Commission on Audit (for brevity, "COA") is invariably on the reasonableness of price rather than on the mode of procurement, I ordered a canvass of the price of the banner even after it had been delivered and accepted with the intention of requesting the dealer to reduce its price in the event that the same is found to be high.

It turned out however that the result of the canvass showed that said dealer's price of P15,000.00 was the lowest. (Please see attached canvass sheets) Hence the inapplicable mode of procurement of "Exclusive Distributor" had to be changed to "Canvass" not only to rectify the error committed by less-knowing procurement officials but also to conform with (sic) the reasonableness of price that had been established through canvass. Implicit in this, I was likewise advised by the same more knowledgeable officials that pursuant to Rule 35.1.2(b) of the IRR, supra, exclusive distributorship is not one of the alternative

modes of procurement. It is merely one of the justifying factors whenever the Director (sic) Contracting Mode of procurement is availed of.

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

Under Lung Center Order No. 152, s. 2001, the approved hiring of an Architect-Consultant was clearly indicated thereon. Because of the urgent need for his technical services, said consultant started to render services even before a formal contract of service was entered into with him although the meeting of the minds which is an essential requisite of a contract had, at that point in time, already been reached. To support the claim of said consultant for actual services rendered, the written contract had to be dated as of the date when said services were started to be rendered. Otherwise, a grave injustice would have been committed to him in the form of unjust enrichment, which verily is not sanctioned by law. Needless to say, our laws are replete with jurisprudence recognizing payment based on quantum merit.

- C. On the violation of auditing rules on drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects.

The construction of projects for which cash advances were drawn for the purpose was undertaken through administration. By administration, it means that no contractor who provides for labor and materials [is] involved because the project are (sic) accomplished, using only organic manpower of the hospital. This scheme is not only legal; it is very much advantageous to the government. Hence, the need to resort to drawing of cash advances to facilitate the payment of supplies/materials at a much cheaper cost because of their being paid on a cash basis was undertaken. (sic) There is no such dispute that dealers demand higher prices when the transaction is on a charged basis owing to the cost of money and other overhead cost as a result of a transaction on a credit basis. (sic) Verily, the savings derived from undertaking projects by administration is by no means negligible.

Section 174 (g) of the Government Accounting and Auditing Manual (GAAM) was cited by the complainants as prohibiting cash advance on account of infrastructure project. The GAAM was issued by COA through its Circular No. 91-368, December 19, 1998, which is embodied on the third page of the Manual. This prohibition has already been deleted in its subsequent Circular No. 97-002, dated February 10, 1997. The repealing clause of said Circular reads: "all

Circulars, Memoranda, Rules and Regulations and other issuances inconsistent herewith, are hereby repealed, amended or modified accordingly". *Res Ipsa Loquitor* likewise implicit (sic). Implicit in this, is that GAAM was neither published in an official gazette nor in a newspaper in (sic) a general circulation. As such, its enforceability is questionable following the doctrine enunciated in *Canda vs. Tuvera*, 146 SCRA 453, 454 and in *De Jesus vs. COA*, G.R. No. 109023, dated August 30, 1998.

Respondent Melendres wishes to stress that most of the invoices in support of the procurement out of the cash advances for a particular project did not exceed the P15,000.00 ceiling set by COA Circular No. 97-002, supra. It is possible though that some invoices paid out of said cash advances may have exceeded the ceiling. But the same was done in good faith, consistent as it was, in the interest of economy and efficiency as purchased discounts were definitely bigger with the volume of order[ed] materials increasing over time. A copy of the Summary of Construction Materials out of the petty cash advances is hereto attached and marked as Annex "5" and made integral part thereof.

Such alternatives was (sic) much better than splitting the requisition to avoid exceeding the ceiling which according to COA Decision No. 2404, dated December 22, 1989, copy attached, is a transaction that must be disallowed in audit. If, indeed, there were invoices paid out of cash advances exceeding the ceiling, it is (sic) merely a subject of an audit suspension that would require us to justify or to secure a belated authority from COA, which we failed to secure before hand through oversight. When and if the auditor who is supposed to be guided by the dictates of economy and efficiency in carrying out her quasi-judicial function, issues a notice of Audit Suspension requiring us to serve a specific authority from COA, we would be willing to comply with such requirement. Meantime, that said notice has not been issued, it would be premature for the Honorable Commission to take cognizance on (sic) this particular allegation by the complainants.

- D. On the unauthorized implementation of reorganization plan unapproved by the Board of Trustees.

Respondent Melendres denies having reorganized the Lung Center. What I did was to issue reassignment orders to some personnel in the interest of the service. Such reassignment is very much allowed by Civil Service laws and regulations for as long as there is no demotion involved. As held by the Supreme Court in *Fernando vs. Sto. Tomas*, 234 SCRA 346, a reassignment in good faith in the interest of the

service is not demotion in duties, responsibilities, status, or rank because demotion presupposes the issuance of an appointment. In the case before this Honorable Commission, such appointment manifesting any demotion is wanting. Besides, personnel who were reassigned have not exhausted administrative remedies by appealing their reassignment with the Civil Service Commission.

E. On the Unlawful/Excessive availments of gasoline expenses.

Under COA Circular No. 85-55 s. 1985 what is excessive or extravagant is situational and is subject to be evaluated, determined and if warranted by circumstances, disallowed in audit by the auditor. If and when any notice to that effect is issued to us, we should be ready to justify any allegation of excessive consumption of gasoline, etc. Again, it is premature for the complainants to raise the issue at this stage.

CONSOLIDATED ANSWER AND COMMENT TO THE REST OF  
THE ALLEGE (sic) OFFENSES COMMITTED BY RESPONDENT  
HEREIN (by way of Affidavit)

- F. On the Payment of the Cellular Phone Bills of Respondent using LCP funds
- G. On the awarding of a Contract of Lease for respondent's own and direct benefit
- H. For unlawful award of the Sports Consultant Services Agreement
- I. On the issuance of Center Order No. 155-A, s. 2001
- J. On the issuance of Center Order No. 55, s. 2000
- K. On the multiple demotions of complainant Jose Pepito Amores
- L. On the questionable appointments
- M. On the undue discrimination in the grant of the privilege to the private practice of medicine and in other instances
- N. On the pending cases with the Ombudsman
- O. On the immorality issue



P. On Drug abuse issue

- The foregoing allege (sic) offenses committed by respondent herein (except item N) had been the subject of an exhaustive report and findings of the Committee which undertook a fact-finding inquiry during the marathon hearing conducted at the Lung Center pursuant to the Order of the Secretary of Health in Department Order No. 119, series of 2002, dated March 22, 2002, supra.

Respondent Melendres herein submitted his affirmative defense during the investigation in respect of the above charges and the Committee submitted its Report and findings of its investigation to the Secretary of Health on June 28, 2002 (Annex "2", supra), which the respondent is incorporating, the same way of reference (sic).

Respondent Melendres requested for a complete copy of Transcript of Stenographic Notes during the Fact-Finding Investigation conducted on the complaint against Dr. Fernando A. Melendres but was advised that the Committee never took stenographic notes of the proceedings as it lacked the skilled manpower to do so, stating its reason that, pursuant to Civil Service Rules, a stenographic transcription is not necessary in formal investigation much more in a Fact-Finding investigation such as that we had conducted. A copy of the letter of the Committee Chairman is hereto attached and marked as Annex "6" and made integral part hereof.

In any event, respondent Melendres is still in [the] process of completing the review of all the documents submitted by both the complainants and the respondent, including the tape recording of the proceedings and the sworn testimonies given by the witnesses during the investigation.

Conformably, a reservation to submit a supplemental counter affidavit is hereby put on record should the notes be made available after the completion of the review and evaluation of the proceedings of the Committee Investigator to insure that respondent Melendres may be able to present in more details his defenses within the time frame required by this Honorable Commission."

On November 11, 2002, dissatisfied with respondent Executive Director Melendres' counter-affidavit, PAGC ordered the setting of the preliminary conference of the case on November 21, 2002 at 10:00 o'clock in the morning.

During the scheduled preliminary conference, complainants were given three (3) days or until November 25, 2002 to submit their reply to the counter-affidavit of the

respondent if they deemed it necessary. Respondent was, in turn, given three (3) days or until November 28, 2002 to submit his rejoinder to the reply, if there is any. Thereafter, PAGC scheduled the continuation of the preliminary conference on November 28, 2002 at 3:00 o'clock in the afternoon.

Complainants did not file any reply to respondent's counter-affidavit. Consequently, during the continuation of the scheduled preliminary conference, the parties were directed by PAGC to submit their respective position paper within five (5) days from November 29, 2002, or until December 4, 2002. PAGC informed the parties that on the basis of the records and the submitted position papers, the case shall be deemed submitted for resolution.

Subsequently, respondent Executive Director Melendres filed with the PAGC a motion for formal hearing and a motion for inhibition, both dated November 29, 2002. In response, PAGC issued an order dated December 3, 2002, denying for lack of merit the said motions, thus:

"The respondent, in the above-entitled case has been afforded due process through an Order requiring him to file his Counter-Affidavit/Answer to the Complaint and the opportunity to be heard through an Order setting the case for a Preliminary Hearing.

Be it noted that due process, as a constitutional precept does not always and in all situations, requires trial-type proceedings. The essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court. One may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. (Stronghold Ins. Co. vs. Court of Appeals, 205 SCRA 605).

The above-entitled case has already been submitted for Resolution on the basis of the pleadings and Position Papers to be submitted not later than December 4, 2002.

Whereas, the Motion for Inhibition is moot and academic since the case is already submitted for Resolution.

WHEREFORE, premises considered, the Motion (For Formal Hearing and/or Investigation) and the Motion for Inhibition are hereby DENIED for lack of merit."

On December 4, 2002, complainants filed with PAGC their position paper. Respondent Executive Director Melendres, however, failed to submit his position paper as required by the order dated November 28, 2002.

• In its investigation report, PAGC states the pertinent issues of the case and its findings and recommendations thereon as follows:

- 1.) Whether or not Executive Director Dr. Fernando A. Melendres has caused undue injury to the Lung Center of the Philippines, including the Government, in the procurement of the presentation banner without public bidding complex with falsification of documents.
- 2.) Whether or not Executive Director Dr. Fernando A. Melendres has accused prejudice and undue injury to the government when the Contract of Lease dated February 1, 2002 was awarded to him whereby he was accorded the privilege to lease a room at the LCP's Doctor's Clinic which he used in the private practice of his profession of medicine.
- 3.) Whether or not Executive Director Dr. Fernando A. Melendres has unlawfully entered into the Sports Consultant Services Agreement with Mr. Godfrey S. Monsod to the prejudice of the government.
- 4.) Whether or not Executive Director Dr. Fernando A. Melendres is arbitrary in the granting and denying [of] the privilege to some doctors to engage in private practice of medicine, thereby causing undue injury to the parties.
- 5.) Whether or not executive Director Dr. Fernando A. Melendres has committed falsification of documents in the hiring of architectural consultant in the person of Architect Federico R. Medina thereby caused (sic) non-professionalism, dishonesty and grave misconduct.
- 6.) Whether or not Executive Director Dr. Fernando A. Melendres has implemented without authority a reorganized plan which is unapproved by the Board of Trustees, thereby committing grave abuse of authority that [is] tantamount to non-professionalism, serious misconduct and a conduct which is prejudicial to the best of (sic) interest of the service.
- 7.) Whether or not Executive Director Dr. Fernando A. Melendres has made questionable appointments and demoted several times the complainant Jose Pepito Amores, to the prejudice of the parties concerned and which constitutes (sic) non-professionalism and a conduct that is prejudicial to the best interest of the service.

- 8.) Whether or not Executive Director Dr. Fernando A. Melendres has committed immorality by living together with a woman [who is] not his legal wife and having a child with her, thereby showing unjustness, insincerity, and a disgraceful and immoral conduct.

## DISCUSSION

### AS TO THE FIRST ISSUE:

Whether or not Executive Director Dr. Fernando A. Melendres has caused undue injury to the Lung Center of the Philippines, including the Government, in the procurement of the presentation banner without public bidding complex with falsification of documents.

The procurement and/or purchase of the presentation banner were made without going through the process of the required public bidding.

The contention of respondent Fernando A. Melendres that the commission of Luis and Associates by the Lung Center of the Philippines (LCP) to do the presentation banner did not prejudice the government is of no merit.

Further, the claim of respondent Fernando A. Melendres that the procurement of the presentation banner subject of the instant case is an exception to the public bidding requirement considering that no other group could have done said undertaking in the least cost, if at all, does not hold any water.

Upon careful perusal and study of the allegations and the documents submitted, it was shown that the said presentation banner merely consisted of the portrait of the President of the Philippines Her Excellency Gloria Macapagal-Arroyo at the top, and with the building landscape supposedly representing the Lung Center of the Philippines at the bottom with the words "Total State of the Art, Peace and Care for every Filipino".

Such an ordinary conception of work cannot be treated as exclusive one and the brainchild of Luis And Associates for any other

commissioned artists could have done it, hence the same cannot be considered as a valid exception to the public bidding requirement.

Under Executive Order No. 301 and Section 365 of the Government Accounting and Auditing Manual (GAAM), Vol. 1, it is so provided that "negotiated purchase are made when the requisitioned articles are sold by an exclusive dealer, publisher, or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitutes of the supplies/equipments can be obtained at more advantageous terms to the government, if the same was procured from a sole distributor."

It is very clear from the above-quoted provision that the procurement of the presentation banner subject of the instant case does not fall within its context and cannot be considered an article that can be acquired only from an exclusive manufacturer or distributor, hence not an exception to the public bidding requirement.

On the other hand, the contention of respondent Fernando A. Melendres that there was no falsification of documents to cover any anomalies thereto is untenable.

The irregularity is evident as shown by the fact that the canvass for the said undertaking was made only after the delivery of the presentation banner. It must be noted that the delivery was made on November 27, 2001, while the purported canvass was done on December 3 and 4, 2001. Glaring is the fact that the canvass was never used as the means or mode to procure the said presentation banner contrary to what has been reflected in the records.

**AS TO THE SECOND ISSUE:**

**Whether or not Executive Director Dr. Fernando A. Melendres has caused prejudice and undue injury to the government when the Contract of Lease dated February 1, 2002 was awarded to him whereby he was accorded the privilege to lease a room at the LCP's Doctor's Clinic which he used in the private practice of his profession of medicine.**

Respondent Fernando A. Melendres does not deny the fact that he leased a room at the Lung Center of the Philippines (LCP) Doctor's Clinic, which he used in the private practice of his profession of medicine.

While it is true that respondent Fernando A. Melendres is paying the proper rental fees for the lease of a room at LCP Doctor's Clinic, the fact remains that he is using a government property for his private and professional purpose without the authority from the LCP Board of Trustees, which is prejudicial not only to the government service as a whole but has caused even demoralization to the other physicians.

This is a bad precedence, which accorded a certain privilege to a particular person using the government facilities to his personal advantage and without even the authority from the Board of Trustees.

Respondent Fernando A. Melendres has welded (sic) his influence and power as the Executive Director of the Lung Center of the Philippines, using such power for him to be accorded certain benefits at the expense of the government and the people as well.

Basic is the principle of law that no person is allowed to enrich himself unjustly at the expense of others, more so on the part of the government. (Tan vs. Largo, SP-08417, June 30, 1986)

#### **AS TO THE THIRD ISSUE:**

#### **Whether or not Executive Director Dr. Fernando A. Melendres has unlawfully entered into the Sports Consultant Services Agreement with Mr. Godfrey S. Monsod to the prejudice of the government.**

The allegation that respondent Fernando A. Melendres entered into a Sports Consultant Services Agreement with Mr. Godfrey S. Monsod without the authority to hire and without any justification is without merit.

The fact is that the Executive Committee of the Lung Center of the Philippines is the body that reviewed the qualifications of Mr. Godfrey Monsod and thereafter duly hired him as sports consultant on November 13, 2001.

It is so provided under the By-Laws of the lung Center of the Philippines that the Executive Committee is the body with the recommendatory power to authorize the Executive Director to act. Hence,

in entering a contract of consultancy with Mr. Godfrey Monsod, respondent Fernando A. Melendres is cloth with the mantle of authority accorded to him by the Executive Committee.

Such act of respondent Fernando A. Melendres constitutes purely a ministerial act, which an officer performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of his own judgement upon the propriety or impropriety of the act done. (Lamb vs. Phipps, 22 Phil. 489)

**AS TO THE FOURTH ISSUE:**

**Whether or not Executive Director Dr. Fernando A. Melendres is arbitrary in the granting and denying the privilege to some doctors to engage in private practice of medicine, thereby causing undue injury to the parties.**

As to the allegation that respondent Fernando A. Melendres has caused injury to the complainants by arbitrarily denying to them the privilege of engaging in private practice of medicine is not substantiated in fact and in law.

While it is true that there is some discrimination on the part of respondent Fernando A. Melendres in the grant and denial of the privilege to engage [in] the private practice of medicine, the complainants failed to substantiate their claim of injury caused by the said discrimination.

**AS TO THE FIFTH ISSUE:**

**Whether or not executive Director Dr. Fernando A. Melendres has committed falsification of documents in the hiring of architectural consultant in the person of Architect Federico R. Medina thereby caused (sic) non-professionalism, dishonesty and grave misconduct.**

In the instant case, there were two (2) Architectural Service Agreements entered into by and between Dr. Fernando A. Melendres for the Lung Center of the Philippines with Architect Federico R. Medina.

The first contract dated June 1, 2000 has the duration of seven (7) months that commenced on June 1, 2000 until December 31, 2000.

Perusal of the documents showed that the same contract was notarized on July 30, 2000 but it was only on July 27, 2001 whereby Dr. Jose Pepito Amores, being a member of the Executive Committee, affixed his initials on it.

As can be gleaned from the documents submitted, it revealed the fact that the Architectural Service Agreement was antedated.

Indeed, falsification of the public document can be adduced therefrom for the fact remains that respondent Fernando A. Melendres is the signatory of the said document, thereby he cannot feign ignorance nor pretend that he knows nothing as to the circumstances surrounding or attending to the execution of the said document.

The second contract dated January 1, 2001 has the duration of one year that commenced on January 1, 2001 until December 31, 2001 and was notarized on July 30, 2001.

Complainant Dr. Jose Pepito Amores affixed his initials on the said second contract under the name of respondent Fernando A. Melendres also on July 27, 2001.

It is observed that complainant Dr. Jose Pepito Amores has initialed the first and second Architectural Service Agreements, which were executed in different dates, on the same date of July 27, 2001.

Thereafter, respondent Fernando A. Melendres on May 31, 2001, issued Center Order No. 152, series of 2001 extending the service of Architect Medina from June 1, 2001 to December 31, 2001.

Careful perusal and study of the documents evidently showed and exposed the irregularity in the execution of the second Architectural Service Agreement.

It must be noted that it is unnecessary for the issuance of Center Order No. 152, series of 2001, which extended the contract of Architect Federico R. Medina, for there was nothing to extend in the first place since the duration of the second Architectural Service Agreement dated January 1, 2001 was for a period of one year, that is from January 1, 2001 to



December 31, 2001, which also embraced the period covered in the said Center Order.

Following the line of the above-stated reasoning, it can be adduced therefrom that the second Architectural Service Agreement dated January 1, 2001 was not really commenced as of the time of its alleged execution on January 1, 2001 or that the purpose of its execution is only to cover the period from January 1, 2001 to May 31, 2001 and not the whole one-year of 2001.

Evidently, it is a glaring indication that there was falsification committed in the instant case, which consists of the purported execution of the second Architectural Service Agreement.

Worthy to note further that the second Architectural Service Agreement dated January 1, 2001 was notarized only on July 30, 2001 when in fact, in the normal course of things the notarization should have been done on January 1, 2001 or on a date near it.

That is another indication that indeed falsification is committed in the instant case, which consists in the falsity of the date of execution, the evident truth being that it was signed and executed on July 30, 2001 and not on January 1, 2001.

It has also been a matter of procedure and practice that before a signatory affixes his signature to a document, like in the case of a contract, a subordinate who is supposed to have reviewed the document affixes his initials on the same first. In other words, when a subordinate affixes his initials, logically the party-signatory has not yet sign (sic) the subject document. Hence, this fact is indicative of the falsification committed on both the first and second Architectural Service Agreements.

The inevitable conclusion is the two contracts were not actually signed and executed on the dates indicated in those documents as their dates of execution, that is, June 1, 2000 for the first contract, and January 1, 2001 for the second contract.

There was indeed falsification committed by the signatories thereto, not only by the respondent Fernando A. Melendres but that includes complainant Dr. Jose Pepito Amores who must have known the circumstances surrounding the execution of the two contracts.

Respondent Fernando A. Melendres has become a party to such falsification, either by deliberate design or through gross inexcusable negligence, having signed the two Architectural Service Agreements under the prevailing circumstances at that time.

**AS TO THE SIXTH ISSUE:**

**Whether or not Executive Director Dr. Fernando A. Melendres has implemented without authority a reorganization plan which is unapproved by the Board of Trustees, thereby committing grave abuse of authority that [is] tantamount to non-professionalism, serious misconduct and a conduct which is prejudicial to the best of (sic) interest of the service.**

Respondent Fernando A. Melendres undertook certain measures for the purpose of effecting improvements and reforms in the LCP by causing the preparation of a reorganization plan or a new organizational structure, which he discussed with the Executive Committee and the Board of Trustees of LCP.

While the Board of Trustees required him to submit a formal proposal for reorganization, no such reorganization plan or new organizational structure was submitted to and approved by the Board.

It must be noted that even before respondent Fernando A. Melendres could submit the required reorganization proposal for the approval of the Board of Trustees, he already started what he called functional reorganization by designation since there was no formal reorganization yet.

In effect, there was movement of personnel in the nature of reassignments and designations as the officials and employees concerned retained their original positions.

Notwithstanding the objective or purpose for which the movement and/or reassignment of personnel was done, the fact remains that there was no clear-cut concept of such movement, whether is it re-engineering or reorganization in the real sense of the word.

Respondent Fernando A. Melendres even admitted that in the latter half of 2001, he used the new or second organizational structure in giving designations to the different physicians of LCP, which was not yet approved by the Board of Trustees.

Hence, it can be gleaned there-from that respondent Fernando A. Melendres committed an indiscreet act and judgment for having conducted a reorganization sans the required prior approval of the Board of Trustees, despite the fact that there were no demotions involved within the meaning of definition or this term.

**AS TO THE SEVENTH ISSUE:**

**Whether or not Executive Director Dr. Fernando A. Melendres has made questionable appointments and demoted several times the complainant Jose Pepito Amores, to the prejudice of the parties concerned and which constitutes (sic) non-professionalism and a conduct that is prejudicial to the best interest of the service.**

Complainant Dr. Jose Pepito Amores in the instant case failed to substantiate his allegation that he was demoted for several times.

While it is true that by the issuance of certain Center Orders by respondent Fernando A. Melendres, some of the functions and duties of complainant Dr. Jose Pepito Amores were diminished, the fact remains that the latter retained his actual position as Deputy Director for Hospital Support Services.

The term "Demotion" as defined under Section 11, Rule VII of the Omnibus Civil Service Rules, promulgated on December 27, 1991, is "the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve reduction of salary".

In the instant case, Dr. Amores was not moved, transferred from one position to another, neither there was an issuance of an appointment for a new position within the context of the above-quoted provision of law.

The fact is complainant Dr. Jose Pepito Amores remained and retained his position as Deputy Director for hospital Support Services.

While certain Center Orders issued by respondent Fernando A. Melendres adversely affected Dr. Amores particularly some of his original functions, nevertheless there was no in fact a demotion of his rank.

The diminution of the functions and responsibilities of complainant Dr. Jose Pepito Amores does not tantamount (sic) to demotion of his actual rank.

**AS TO THE EIGHT ISSUE:**

**Whether or not Executive Director Dr. Fernando A. Melendres has committed immorality by living together with a woman [who is] not his legal wife and having a child with her, thereby showing unjustness, insincerity, and disgraceful and immoral conduct.**

While it may be true that during his marriage respondent Fernando A. Melendres has sired a child with his mistress, named Gigi Facundo Lorenzo, as evidenced by the attached copy of the National Statistic Office (NSO) certified birth certificate of certain Ma. Victoria Facundo Lorenzo, born on 11 December 1998, whereby the respondent is listed as the father of the child, yet there is no substantial evidence to prove that Melendres and Lorenzo were living together as alleged.

**FURTHER DISCUSSION**

**On the issue that Executive Director Dr. Fernando A. Melendres violated the auditing rules on the drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects:**

The issue involves non-observance and/or violation of certain provisions of the Government Accounting Auditing Manual (GAAM), and the rules and regulations of the Commission on Audit (COA).

Hence, it is beyond the jurisdiction of the Commission to resolve such issue that falls squarely within the ambit of another forum like the Commission on Audit (COA).

**On the issue that respondent Unlawfully/Excessively availed of gasoline expenses:**

The records of the case failed to sufficiently substantiate such allegation.

Moreover, the non-submission of trip tickets pertains to the observance and application of the rules and regulations of the Commission on Audit (COA), which is beyond the jurisdiction of the Commission.

**On the issue that respondent used LCP funds in the payment of the personal use of his cellular phone.**

The issue pertains to certain benefits and privileges granted by the Board of Trustees to the Directors of Specialty Hospitals like the Lung Center of Philippines, and this also involves Civil Service rules and other pertinent laws granting benefits to government officials and employees for their convenience.

Hence, the determination of the legality of the act is beyond the jurisdiction of the Commission.

**On the issue that the issuance of Center Order Nos. 155-A, Series of 2001 and No. 55, Series of 200 were illegal/unlawful:**

The issuance of Center Orders is merely an exercise of the ministerial function of the Executive Director of the Lung Center of the Philippines, thus the determination of whether or not such Center Orders are valid or not is beyond the jurisdiction of the Commission.

**On the issues that there were pending cases with the ombudsman against the respondent and the alleged drug**

abuse of Dr. Fernando A.  
Melendres:

The pending cases against Dr. Fernando A. Melendres before the Office of the Ombudsman are separate and distinct, and cannot in anyway affect the independence of the Commission in the conduct of its formal inquiry.

Finally, to determine whether or not Executive Director Dr. Fernando A. Melendres has been using drugs particularly Demerol is not within the technical expertise, competence and jurisdiction of the Commission.

CONCLUSION

After a thorough perusal of the records of the case and a lengthy discussion, taking into consideration of every detail presented by both parties on the basis of the laws allegedly transgressed thereto, the Commission is of the conclusion that respondent Fernando A. Melendres has committed the following:

First, in the procurement of the presentation of banner without going through the public bidding requirement and even resorted to some falsification of public documents, respondent Fernando A. Melendres has clearly violated Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices for having caused undue injury to the whole Lung Center of the Philippines (LCP), including the government, and by giving Luis and Associates unwarranted benefits, advantage or preferences in the discharge of his official and administrative functions through manifest partiality, evident bad faith and gross inexcusable negligence.

Respondent Fernando A. Melendres, as a consequence of his actions, failed to perform and discharge his duties with the highest degree or excellence and professionalism as expected of high ranking official, in violation of Section 4 (A)(b) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

The act of respondent Fernando A. Melendres in such procurement of presentation banner sans the required public bidding complex (sic) with falsification of documents also constitutes gross misconduct, dishonesty and falsification of official documents, in violation of Section 46(b)(4), (1) and (13), Chapter 6, Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

Further, respondent Fernando A. Melendres has transgressed Article 171 of the Revised Penal Code, Falsification of a Public Officer, Employee, or Notary or Ecclesiastic Minister, which specifically provides that "any public officer, employee or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: x x x x x (6) Making any alteration or intercalation in genuine document which changes its meaning."

Second, respondent Fernando A. Melendres has caused prejudice and undue injury to the government, in violation of Section 3 (e) of Republic Act No. 3019, when he accorded unto himself the privilege to lease a room at the LCP's Doctor's Clinic which he used in the private practice of his profession of medicine.

Taking advantage of his rank and authority to enjoy certain privileges, respondent Fernando A. Melendres failed to uphold the public interest over and above his personal interest as a clear contravention of Section 4 (A) (a) of Republic Act No. 6713.

Further, such act constitutes a conduct prejudicial to the best interest of the service, as enunciated under Section 46 (b) (27), Chapter 6 Subtitle A, Title I, Book V of Executive Order No. 292.

Third, respondent Fernando A. Melendres has committed falsification of documents as can be gleaned from the two (2) Architectural Service Agreements entered into by and between Fernando A. Melendres for the Lung Center of the Philippines, with Architect Federico R. Medina subject of the instant case (sic).

In the case at bar, respondent again violates Article 171 of the Revised Penal Code, Falsification of a Public Officer, Employee or Notary or Ecclesiastic Minister, specifically "x x x x x (5) Altering true dates and (6) Making any alteration of intercalation in a genuine document which changes its meaning."

Further, such actuation of the respondent is a clear manifestation of non-professionalism in contravention of Section 4 (A) (b) of Republic Act No. 6713, and also constitutes dishonesty and gross misconduct, in violation of Section 46 (b) (1) and (4), Chapter 6, Subtitle A, Title I, Book V of Executive Order No. 292.

Finally, respondent Fernando A. Melendres, in implementing and executing a reorganization plan without the authority and approval of the Board of Trustees, has committed thereby grave abuse of authority that [is] tantamount to non-professionalism as enunciated in Section 4 (A) (b)

of Republic Act no. 6713, serious misconduct and a conduct which is prejudicial to the best interest of the service, as clearly stated in Section 46, (b) (4) and (27), chapter 6, Subtitle A, Title I, Book V of Executive Order No. 292.

**WHEREFORE**, premises considered, this Commission recommends to Her Excellency President Gloria Macapagal-Arroyo the **DISMISSAL FROM THE SERVICE** of the respondent **Dr. Fernando A. Melendres**, with forfeiture of all his government financial benefits and disqualification to be re-appointed to any position in the government service."

After a careful review of the records of the case, this Office finds that PAGC's findings and recommendations as contained in its investigation report are in order.

Preliminary, it must be pointed out that PAGC correctly denied respondent Executive Director Melendres' motions for a formal hearing and for inhibition. A formal hearing is not a mandatory requirement of due process in administrative proceedings. One may be heard not solely by verbal presentation, but also, and perhaps even many times creditably and practicably than oral argument, through pleadings. Thus, it is enough that the parties are given the opportunity to be heard by means of the submission of pleadings, memoranda and/or position papers (PAL v. NLRC, 198 SCRA 748 [1991]; Concerned Officials of MWSS v. Vasquez, 240 SCRA 502 [1995]). In fact, aside from counter-affidavit, respondent Executive Director Melendres was also required by PAGC to submit his position paper but he failed to do so. Such failure amounts to a waiver to present additional evidence on his behalf. It is, therefore, puzzling why respondent Executive Director was asking for a full-blown formal hearing when he could not even submit a position paper. Moreover, in his counter-affidavit, respondent Executive Director Melendres admitted that "the same complaint [subject of this case] had already been investigated, reviewed, evaluated, heard, and terminated by the [Fact-Finding] Committee [created by Secretary Manuel M. Dayrit of the Department of Health]" (Counter-Affidavit, p. 25; Records, Folder I, p. 3-4). Thus, one may validly ask why respondent Executive Director Melendres wanted another full-blown investigation. Undoubtedly, the inescapable conclusion that can be made from the filing of the motion for a formal hearing is that respondent Executive Director Melendres was merely buying time by trying to prolong the disposition of the case in order to unduly perpetuate himself as the head of the Lung Center of the Philippines.

On the other hand, the denial of the motion for inhibition against Commissioner Cesar Buenaflor for alleged bias and impartiality is in order considering that the grounds adduced are not grounds for mandatory disqualification or inhibition of judges. Rule 137, Section 1 of the Rules of Court enumerates the grounds for the absolute disqualification of judges, to wit:



"No judge or judicial officer shall sit in every case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor, or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

This rule enumerates the grounds under which a judge is legally disqualified from sitting in a case, and excludes all other grounds not specified therein (*Velez v. Court of Appeals*, 34 SCRA 109; *Pimentel v. Salonga*, 21 SCRA 160 [1969]). The judge may, however, "in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above (Rule 173, Section 1, Rules of Court). Hence, the decision to inhibit is left to the sound discretion of the judge himself. No one has the right to supplant the exercise of such discretion provided the exercise of the same is devoid of grave abuse.

As correctly found by PAGC, respondent Executive Director Melendres is guilty of illegal procurement of presentation banner complexed with falsification of public documents, taking advantage of his position to accord unto himself the privilege to lease a room at the LCP's Doctor's Clinic in order to engage in the private practice of medicine without the approval from LCP's Board of Trustees, falsification of documents in the execution of two (2) Architectural Service Agreements, and implementation of a reorganization plan without authorization from LCP's Board of Trustees. Noteworthy is the fact that each of these offenses is considered a grave offense meriting the supreme penalty of dismissal from the service considering that the said offenses involve dishonesty, grave misconduct, and falsification of documents.

Section 22 of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order (E. O.) No. 292, otherwise known as the *Administrative Code of 1987*, states that dishonesty, grave misconduct, and falsification of official documents are grave offenses with the corresponding individual penalty of dismissal from the service even if the respondent committed the same for the first time. This is so because the policy of the State is to promote a high standard of ethics in the public service wherein public officials and employees should at all times be accountable to the people and should discharge their duties with utmost responsibility, integrity, and competence (Section 2, Republic Act No. 6713). Respondent Executive Director Melendres unmistakably breached this State policy.

In fact, the nature and the totality of respondent Executive Director Melendres' commission of the aforementioned offenses make him notoriously undesirable to remain in the public service. Appropriately, the penalty of dismissal from the service that is hereby imposed on respondent Executive Director Melendres carries with it the

cancellation of his eligibility, the forfeiture of his leave credits and retirement benefits, and the disqualification from re-employment in the government service in the future pursuant to Section 9 Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987.

**WHEREFORE**, as recommended by the Presidential Anti-Graft Commission, respondent Executive Director **FERNANDO A. MELENDRES** is hereby **DISMISSED FROM THE SERVICE**, with forfeiture of his leave credits and retirement benefits, and disqualification from re-employment in the government service, effective immediately upon receipt of this order.

**SO ORDERED.**

Done in the City of Manila, this *4<sup>th</sup>* day of *February*, in the year of our Lord, year two thousand and three.

By authority of the President:



**MANUEL B. GAITE**  
Acting Deputy Executive Secretary  
for Legal Affairs