

EN BANC

[G.R. No. 198457, August 13, 2013]

FILOMENA G. DELOS SANTOS, JOSEFA A. BACALTOS, NELANIE A. ANTONI, AND MAUREEN A. BIEN, PETITIONERS, VS. COMMISSION ON AUDIT, REPRESENTED BY ITS COMMISSIONERS, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*^[1] under Rule 64 in relation to Rule 65 of the Rules of Court are Decision Nos. 2010-051^[2] and 2011-045,^[3] dated April 8, 2010 and August 8, 2011, respectively, of respondent Commission on Audit (CoA) which affirmed Notice of Disallowance (ND) No. 2008-09-01(SAT)^[4] dated September 8, 2008 for the amount of P3,386,697.10 and thereby held petitioners Filomena G. Delos Santos, Josefa A. Bacaltos, Nelanie A. Antoni, and Maureen A. Bien (petitioners), *inter alia*, solidarily liable therefor.

The Facts

Sometime in October 2001, then Congressman Antonio V. Cuenco (Cuenco) of the Second District of Cebu City entered into a Memorandum of Agreement^[5] (MOA) with the Vicente Sotto Memorial Medical Center (VSMMC or hospital), represented by Dr. Eusebio M. Alquizalas (Dr. Alquizalas), Medical Center Chief, appropriating to the hospital the amount of P1,500,000.00 from his Priority Development Assistance Fund (PDAF) to cover the medical assistance of indigent patients under the Tony N' Tommy (TNT) Health Program (TNT Program).^[6] It was agreed, *inter alia*, that: (a) Cuenco shall identify and recommend the indigent patients who may avail of the benefits of the TNT Program for an amount not exceeding P5,000.00 per patient, except those with major illnesses for whom a separate limit may be specified; (b) an indigent patient who has been a beneficiary will be subsequently disqualified from seeking further medical assistance; and (c) the hospital shall purchase medicines intended for the indigent patients from outside sources if the same are not available in its pharmacy, subject to reimbursement when such expenses are supported by official receipts and other documents.^[7] In line with this, Ma. Isabel Cuenco, Project Director of the TNT Program, wrote^[8] petitioner Nelanie Antoni (Antoni), Pharmacist V of VSMMC, requesting the latter to purchase needed medicines not available at the hospital pharmacy from Sacred Heart Pharmacy or Dell Pharmacy which were supposedly accredited suppliers of the Department of Health. The said request was approved.^[9]

The Audit Proceedings

Several years after the enforcement of the MOA, allegations of forgery and

falsification of prescriptions and referrals for the availment of medicines under the TNT Program surfaced. On December 14, 2004, petitioner Filomena G. Delos Santos (Delos Santos), who succeeded^[10] Dr. Alquizalas, created, through Hospital Order No. 1112,^[11] a fact-finding committee to investigate the matter.

Within the same month, Beatriz M. Booc (Booc), State Auditor IV, who was assigned to audit the hospital, came up with her own review of the account for drugs and medicines charged to the PDAF of Cuenco. She furnished Delos Santos the results of her review as contained in Audit Observation Memoranda (AOM) Nos. 2004-21,^[12] 2004-21B,^[13] and 2004-21C,^[14] all dated December 29, 2004, recommending the investigation of the following irregularities:

- a. AOM No. 2004-21 x x x involving fictitious patients and falsified prescriptions for anti-rabies and drugs costing P3,290,083.29;
- b. AOM No. 2004-21B x x x involving issuance of vitamins worth P138,964.80 mostly to the staff of VSMMC and TNT Office covering the period January to April 2004; and
- c. AOM No. 2004-21C x x x covering fictitious patients and falsified prescriptions for other drugs and medicines worth P552,853.85 and unpaid falsified prescriptions and referral letters for drugs and medicines costing P602,063.50.^[15]

Meanwhile, the fact-finding committee created by Delos Santos submitted its Report^[16] dated January 18, 2005 essentially affirming the "unseen and unnoticeable" irregularities attendant to the availment of the TNT Program but pointing out, however, that: (a) VSMMC was made an "unwilling tool to perpetuate a scandal involving government funds";^[17] (b) the VSMMC management was completely "blinded" as its participation involved merely "a routinary ministerial duty" in issuing the checks upon receipt of the referral slips, prescriptions, and delivery receipts that appeared on their faces to be regular and complete;^[18] and (c) the detection of the falsification and forgeries "could not be attained even in the exercise of the highest degree or form of diligence"^[19] as the VSMMC personnel were not handwriting experts.

In the initial investigation conducted by the CoA, the results of which were reflected in AOM No. 2005-001^[20] dated October 26, 2005, it was found that: (a) 133 prescriptions for vaccines, drugs and medicines for anti-rabies allegedly dispensed by Dell Pharmacy costing P3,407,108.40, and already paid by VSMMC from the PDAF of Cuenco appeared to be falsified;^[21] (b) 46 prescriptions for other drugs and medicines allegedly dispensed by Dell Pharmacy costing P705,750.50, and already paid by VSMMC from the PDAF of Cuenco likewise appeared to be falsified;^[22] and (c) 25 prescriptions for drugs and medicines allegedly issued by Dell Pharmacy costing P602,063.50 were also ascertained to be falsified and have not been paid by VSMMC.^[23]

In her Comment/Reply^[24] to the aforementioned AOM No. 2005-001 addressed to Leonor D. Boado (Boado), Director of the CoA Regional Office VII in Cebu City, Delos Santos explained that during the initial stage of the implementation of the MOA (i.e.,

from 2000 to 2002) the hospital screened, interviewed, and determined the qualifications of the patients-beneficiaries through the hospital's social worker.^[25] However, sometime in 2002, Cuenco put up the TNT Office in VSMMC, which was run by his own staff who took all pro forma referral slips bearing the names of the social worker and the Medical Center Chief, as well as the logbook.^[26] From then on, the hospital had no more participation in the said program and was relegated to a mere "bag keeper."^[27] Since the benefactor of the funds chose Dell Pharmacy as the sole supplier, anti-rabies medicines were purchased from the said pharmacy and, by practice, no public bidding was anymore required.^[28]

Consequently, a special audit team (SAT), led by Team Leader Atty. Federico E. Dinapo, Jr., State Auditor V, was formed pursuant to Legal and Adjudication Office (LAO) Order Nos. 2005-019-A dated August 17, 2005 and 2005-019-B dated March 10, 2006 to conduct a special audit investigation with respect to the findings of Booc and her team.^[29] Due to time constraints, however, AOM No. 2005-001 was no longer included in the SAT focus.^[30] On October 15, 2007, the SAT reported^[31] the following findings and observations:

1. The provision of National Budget Circular No. 476 dated September 20, 2001 prescribing the guidelines on the release of funds for the PDAF authorized under Republic Act (R.A.) No. 8760, as Reenacted (GAA for CY 2001) were not followed;^[32]
2. Existing auditing law, rules and regulations governing procurement of medicines were not followed in the [program's] implementation;^[33]
3. The [program's] implementation did not follow the provisions of the MOA by and between [Congressman Cuenco] and the Hospital;^[34] and
4. Acts committed in the implementation of the project were as follows:
 - a. There were [one hundred thirty-three (133)] falsified prescriptions for anti-rabies vaccines, drugs and medicines [costing] P3,345,515.75 [allegedly] dispensed by Dell Pharmacy [were] paid by VSMMC from the [PDAF of Congressman Cuenco];
 - b. [Forty-six (46) falsified prescriptions] for other drugs and medicines costing P695,410.10 [were likewise reportedly] dispensed by Dell Pharmacy and paid by VSMMC from the [said PDAF] x x x; and
 - c. [Twenty-five (25) prescriptions worth] P602,063.50 [were also claimed to have been] served by Dell Pharmacy but still unpaid x x x.^[35]

Examination by the SAT of the records and interviews with the personnel involved showed that the purported patients-beneficiaries of the TNT Program were mostly non-existent and there was no actual procedure followed except for the mere preparation of payment documents which were found to be falsified as evidenced by the following:

1. Thirteen (13) hospital surgeons disowned the signatures on the prescriptions supporting the claims. Surgeons do not prescribe anti-rabies vaccines; they operate on patients.
2. Almost all of the patients named in the prescriptions were not treated or admitted at the Hospital or in its Out-patient Department. Those whose names appeared on Hospital records were treated at different dates than those appearing on the prescriptions:

PATIENT	TREATED	BILL	DATE OF PRESCRIPTION
Leah Clamon	Nov. 12, 2003	11/11/03	11/03/03
Jean Cañacao	Nov. 30, 2003	11/25/03	11/18/03
Felipe Sumalinog	Dec. 17, 2004	12/10/03	12/08/03
Vicente Perez	Mar. 12, 2004	11/26/03	11/17/03
Vincent Rabaya	Sept. 8, 2003	12/12/03	11/28/03
Rodulfo Cañete	July 24, 2004	01/16/04	01/12/04

3. Full dosages of anti-rabies vaccines were allegedly given to the patients although it is gross error to do so for these medicines are highly perishable. These should be refrigerated and injected immediately and periodically. For instance:
 - a. Mr. Vicente Perez received the full dosage on November 26, 2003 and again on November 27, 2003. (Hospital records showed that Mr. Perez was admitted in March 2003 for surgery.)
 - b. Mr. Maximo Buaya received the full dosage on January 25 and on February 29, 2004.
 - c. Mr. Gregorio Rabago received his full dosage on December 6, 2003.
4. The dates of 80 prescriptions for anti-rabies and 45 for other drugs and medicines are earlier than the dates of the corresponding

delivery receipts. The gaps in the dates ranged from 1 to 47 days. On the other hand, 33 prescriptions for anti-rabies had later dates than the dates of the delivery receipts. The difference in the dates ranged from 1 to 22 days.

5. The Pharmacy Unit still prepared Purchase Request [PR] for the claims Dell [Pharmacy] submitted to that office when the PR is no longer necessary as the medicines have already been taken by the patients.
6. Of the three South District residents personally interviewed by the Team, two denied having sought or received help from the [TNT] Program or being hospitalized at VSMMC for dog bite.
7. The hospital social worker, Ms. Mergin Acido, declared that she was bypassed in the evaluation of the alleged patients for the TNT Office has clerks who "evaluate" the eligibility of the patients. The prescriptions and referral slips were directly forwarded to the Pharmacy Unit for stamping and submission to the Dell Pharmacy. She had no opportunity then to see the patients personally.
8. Mr. Louies James S. Yrastorza has stated under oath the falsity of the claims for payment. He stated that he was ordered to submit to the Pharmacy Unit falsified prescriptions accompanied by referral slips signed by Mr. James Cuenco for non-existing patients. Subsequently, sometime in September 2007 Mr. Yrastorza "clarified" his statements effectively recanting his first oath.
9. The Office of the Provincial Election Supervisor certified that out of the 30 names of the patients randomly selected, only 15 were found listed in the registered voters' database.
10. Prescriptions were stamped "VSMMC" signed/initialed by the Pharmacist who is off duty as shown by the attendance record, e.g. Mesdames Arly Capuyan, Norma Chiong, Corazon Quiao, Rowena Rabillas, and Riza Sei[s]mundo.^[36]

Subsequently, or on September 8, 2008, the SAT Team Supervisor, Boado, issued ND No. 2008-09-01,^[37] disallowing the amount of P3,386,697.10 for the payment of drugs and medicines for anti-rabies with falsified prescription and documents, and holding petitioners, together with other VSMMC officials, solidarily liable therefor.^[38] Petitioners' respective participations were detailed as follows: (a) for Delos Santos, in her capacity as Medical Center Chief, for signing and approving the disbursement vouchers and checks; (b) for petitioner Dr. Josefa A. Bacaltos, in her capacity as Chief Administrative Officer, for certifying in Box A that the expenses were lawful, necessary and incurred in her direct supervision; (c) for Antoni, in her capacity as Chief of the Pharmacy Unit, for approving the supporting documents when the imputed delivery of the medicines had already been consummated; (d) for petitioner Maureen A. Bien, in her capacity as Hospital Accountant, for certifying in Box B of the disbursement voucher that the supporting documents for the payment to Dell Pharmacy were complete and proper.^[39]