



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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April 23, 1997

Mr. Antonio Cabrera
Secretary, Department of Finance
Commonwealth of Northern Mariana Islands
Saipan, MP 96950

Subject: Final Report on the Rota Health Center Director's Claims Against the Rota Health Center (Report No. AR 97-06)

Dear Mr. Cabrera:

The enclosed final report presents the results of our investigation of the Rota Health Center (RHC) Director's claims against the Rota Health Center. The objective of our audit was to determine whether the current RHC Director had a conflict of interest in paying certain expenses for an apartment leased by RHC from her husband including (1) requesting the payment of \$4,282.02 from RHC's funds to settle the apartment's account with CUC, (2) requesting the Rota Department of Finance (DOF- Rota) to certify funds to pay \$5,000 worth of damages to the leased apartment and \$4,000 rental from November 1995 to March 1996, and (3) requesting DOF-Rota to certify funds to pay for the original purchase price of a washing machine.

Our audit showed that the current Director of RHC had a conflict of interest and violated the Ethical Standards in public contracting provisions of the CNMI Procurement Regulations by (1) ordering the payment of \$4,282.02 from RHC's funds to settle the utility bills of two RHC employees who occupied the apartment leased by the Director's spouse to RHC; even though the Director had prevented RHC from collecting utility payments from the employees by retaining the utility billing in her name; and upon becoming RHC Director ordered payment from the Government to CUC without attempting to collect from the employees (one of whom is still an RHC employee and has agreed to pay her share), (2) requesting DOF-Rota to certify funds to pay her manager \$5,000 for the cost of damage to the leased apartment even though the damage occurred after possession of the apartment was returned to her spouse, (3) requesting DOF-Rota to pay her spouse \$4,000 for rental costs from November 1995 to March

1996 even though possession of the apartment had been returned to her spouse in November 1995, and (4) procuring a washing machine from herself and demanding \$700 as payment without providing any proof of its cost or age.

We recommended that the Department of Finance (1) require the current Director of RHC to return the amount of \$4,282.02 taken from RHC funds, (2) deny the \$5,000 claim for repairs, and the \$4,000 claim for a non-existent lease extension, (4) deny the claim of the Director of RHC for the cost of the washing machine purchase from herself; and the Mayor of Rota (Recommendations 3 and 5) determine what administrative sanctions should be applied for violations of the Ethics in Procurement provisions.

In a letter dated January 20, 1997, the Secretary of Finance concurred with Recommendations 1, 2, and 4.

For Recommendations 3 and 5, the Mayor of Rota stated in his letter dated January 17, 1997, that he agrees in principal on the conflict of interest but disagrees with the report on the recommended actions and legitimacy (of claims). The Mayor ignored the facts presented in the audit report, but stated that he will implement corrective action to preclude recurrence of these problems in the future. This report provides further analysis showing that the Mayor should implement the recommendations.

Based on the responses we received from the Department of Finance and the Rota Mayor's Office, we consider 4 recommendations resolved and 1 recommendation open. The additional information and action needed to consider the recommendations resolved or closed is presented in **APPENDIX D**.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An open recommendation is one where no action or plan of action has been made by the client (department or agency). A *resolved* recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame for action. A *closed* recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it.

Please provide us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,

ORIGINAL SIGNED

Leo L. LaMotte
Public Auditor, CNMI

cc: Governor
Lt. Governor
Tenth CNMI Legislature (27 copies)
Mayor of Rota
Attorney General
Special Assistant for Management and Budget
Secretary of Public Health Services
Public Information Officer
Press

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Our audit showed that the current Director of the Rota Health Center (RHC) violated the ethical standards in public contracting provisions of the CNMI Procurement Regulations by (1) ordering the payment of \$4,282.02 from RHC's funds to settle the utility bills of two RHC employees who occupied the apartment leased by the Director's spouse to RHC; even though the Director had prevented RHC from collecting utility payments from the employees by retaining the utility billing in her name; and upon becoming RHC Director ordered payment from the Government to CUC without attempting to collect from the employees (one of whom is still an RHC employee and has agreed to pay her share), (2) requesting the Rota Department of Finance (DOF-Rota) to certify funds to pay her apartment manager \$5,000 for the cost of damages to the leased apartment even though the damages occurred after possession of the apartment was returned to her spouse, (3) requesting DOF to pay her spouse \$4,000 for rental costs on the leased apartment from November 1995 to March 1996 even though possession of the apartment had been returned to her spouse in November 1995, and (4) procuring a washing machine from herself and demanding \$700 as payment without providing any proof of its cost or age.

On July 28, 1994, the Rota Health Center entered into a leasehold agreement with the husband of the current Director of RHC. At that time, the current Director was not yet employed by the Government. The subject of the lease was a three-bedroom concrete apartment to house RHC's personnel. It had a fixed monthly rental of \$800 excluding the cost of utilities, e.g., water, electricity, garbage collection, and all other services.

Two RHC employees occupied the apartment for most of the time before it was turned back to the owners in November 1995.

The owners refused to accept the key because the Commonwealth Utilities Corporation (CUC) had shut off the power and water supply to the apart-

ment due to unpaid bills amounting to \$4,489.55 (including \$208 owed by RHC and \$4,282 not owed by RHC). The owner stated that this constituted a violation of the lease agreement. However, the RHC Director personally retained control of the utility bills by keeping the account in her name both before and after she became the RHC Director, causing CUC to give clearance to the tenants vacating the apartment because it was unaware of the tenants' liability for utility costs.

On March 6, 1996, at the current Director's request, a check from RHC's funds amounting to \$4,489.55 was issued to CUC in full settlement of the bill without even attempting to collect from the former occupants. One of the former occupants is still an RHC

The current Director of Rota Health Center abused her power and authority which resulted in undue payment of \$4,282 by the Government.

employee who told us she is willing to pay her share.

Subsequently, the RHC Director (as one of the owners) appointed a manager to represent the owners' interests in an inspection of the apartment in March 1996, which was four months after the apartment was returned to the owners in November 1995. Although an inspection of the apartment in November 1995 showed minor damages which a former occupant agreed to pay, a bill in the amount of \$5,373 was subsequently sent by the Manager to RHC after the March 1996 inspection, representing the cost of cleaning and repair, and replacement of various items of furniture in the apartment.

On April 8, 1996, the Director requested the Rota Department of Finance to certify funds of \$5,000 to pay this bill in favor of herself and her spouse. The amount was reduced from \$5,373 to \$5,000, probably because amounts over \$5,000 are required to be processed in Saipan. A few months later, the Director also requested payment of \$4,000 to her spouse for rental costs from November 1995 (when RHC notified the owners that RHC was returning possession of the apartment to the owners) to March 1996 (when the owners' finally acknowledged their acceptance). According to law, owners can sue for damages but cannot refuse to accept repossession of their property.

I. LEASE RELATED CLAIMS

Ethics Violation

Section 6-204 of the CNMI Procurement Regulations prohibits any employee from participating directly or indirectly in a procurement when the employee knows that the employee or any immediate family member has a financial interest pertaining to the procurement.

Moreover, Section 6-208(3) provides that it is a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than government, in connection with any contract or claim ...in which an employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the government is a party or has a direct and substantial interest.

Our audit showed that the current Director of RHC violated the CNMI procurement regulations in (1) ordering the payment of utility bills of two RHC employees who previously occupied the apartment leased by RHC from the Director's husband, and (2) requesting DOF-Rota to certify funds to pay the cost of damages to the leased apartment and rental payment from November 1995 to March 1996.

This occurred because the current Director of the Rota Health Center abused her power and authority, which resulted in undue payment of \$4,282.02 by the Government and claims of \$9,000 for damages and additional rent for the apartment.

In our opinion, the Director's claims should be denied. At the time the premises were inspected in November 1995, no damage was noted beyond normal wear and tear, except for two items for which the former tenant accepted responsibility. A March 1996 inspection showed that the damages occurred after RHC terminated the lease in November 1995, and RHC is not liable because the Director or her spouse are required to accept the repossession when tendered. The owners have a duty to protect their property after possession is returned to them.

Accordingly, we recommend that the Secretary of Department of Finance:

- (1) require the current Director of RHC to return the amount of \$4,282.02 taken from RHC funds;

The amount to be recouped was reduced to \$4,282.02 from \$4,489.55 as pointed out by the Secretary of DOF on the draft audit report that \$208 was actually the responsibility of RHC.

- (2) deny the \$5,000 claim for repairs, and the \$4,000 claim for a non-existent lease extension.

Moreover, we recommend that (3) the Mayor of Rota determine what administrative sanctions should be applied for violations of the Ethics in Procurement provisions.

DOF RESPONSE AND OPA COMMENTS

The Secretary of Finance concurred with Recommendations 1 and 2.

OPA Comments

We consider *Recommendations 1 and 2 resolved*. We concur with the Secretary of DOF's opinion that the utility charges amounting to \$208 incurred by the visiting physicians should be deducted from the \$4,489.55 due from the RHC Director, since these physicians are not employees of RHC but of CHC-Saipan. This reduces the amount owed by the RHC Director to \$4,282.02.

The additional information needed to consider the recommendations closed is presented in **APPENDIX D**.

OFFICE OF THE MAYOR RESPONSE AND OPA COMMENTS

General Comments on the Findings

In his reply dated January 17, 1997, the Mayor of Rota stated that there are many instances in which Commonwealth law allows those with expenditure or requesting authority to legiti-

mately purchase goods and services from their family. According to him, the legislature made our conflict of interest laws flexible enough to accommodate "familial realities."

OPA Comments

As far as we can determine, the CNMI conflict of interest laws are exactly the opposite of the Mayor's statement. For instance, the Ethics in Public Contracting Section 6-204 (1a) on Employee Conflict of Interest states that "...It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that: the employee or any member or the employee's immediate family has a financial interest pertaining to the procurement...."

Provisions in the Ethics Act are virtually identical. We have not found any instance where CNMI conflict of interest laws allow those with expenditure or requesting authority to legitimately purchase goods and services from their family. In fact, Public Law 2-48 establishing the Commonwealth Ports Authority made such activities a felony. We suggest that the Mayor and his staff familiarize themselves with these laws and enforce them accordingly.

OPA's Audit Conclusions are Administrative, not Judicial

The Mayor also stated that the draft audit report reaches legal conclusions

about the legitimacy of the landlord's claims which "seems outside the Auditor's brief." He added that "the auditor lacks a charter to enter these judicial waters."

OPA Comments

The Office of the Public Auditor (OPA) was established as an independent agency of the CNMI Government mainly to audit the receipt, possession, and disbursement of public funds. Incidental to the discharge of its function, OPA frequently interprets laws and regulations. The Office of the Public Auditor renders no judicial decisions. Our opinions, and even orders we sometimes issue, e.g., cases of appeals on bid protests, are administrative in nature. All our opinions and orders are subject to review by the courts if sought.

Office of the Mayor Response on Recommendation 3 - Conflicts of Interest

The Mayor of Rota said that he "agrees in principal on the conflict (of interests)." He further said that it would have been better for the Resident Director to delegate the responsibility to another person than to handle the apartment claims herself, and stated that he will implement corrective action to preclude recurrence of these problems in the future.

OPA Comments

CNMI Laws and Regulations are clear on conflict of interest matters, and the

Mayor is responsible for implementing appropriate administrative penalties. The Mayor's statement that he will implement corrective action is welcomed for future guidance, but is insufficient for carrying out his current responsibilities for the violations which have already taken place.

Office of the Mayor Response on Recommendation 3 - Payments Not Owed by RHC Made and Requested to Self and Spouse

The Mayor stated that he "respectfully disagrees with the report on legitimacy (of claims)." He further stated that "the net outcome of their position is that bills got paid that should have been paid, the public trust was not violated, public moneys went to valid debts and no Rota family was unjustifiably enriched. Any employment sanctions against the RHC Director must take these excusing factors into consideration."

OPA Comments

The Mayor apparently has not grasped the seriousness of the ethics violations. Section 6-204 (2) states that upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Chief (Director of Procurement and Supply) a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further

participation, if any, the employee may have in the transaction. Neither of these requirements were complied with, and the violations are subject to 6 CMC Div 3 Chapter 2, Offenses Against the Commonwealth, specifically §3202, Misconduct in Public Office, which states that "...Every person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office, and upon conviction thereof may be imprisoned for a period of not more than one year, or fined not more than \$1,000, or both...."

In addition, Section 6-211 of the CNMI Procurement Regulations specifies penalties for such violations to be reprimand, suspension, dismissal of employment, termination, civil injunction, civil suit for damages or return of government money or criminal prosecution.

We suggest that the Mayor carry out his responsibility in regard to those requirements and not dismiss such matters as minor. Any misconduct imposing such severe penalties is not minor.

On Payment of Utility Charges from RHC Funds

The Mayor of Rota believes that it is RHC's responsibility to pay the \$4,489.55 utility charges and "The RHC Director, as the owner, should not be asked to repay this money." He stated that it was never the owners'

responsibility to see that the government employees paid the CUC bills.

OPA Comments

The Mayor stated what *should* have happened but has ignored the facts. The RHC Director, before becoming the RHC Director, prevented the RHC from collecting from the former occupants by retaining the account in her own name and without making any attempt to ensure that the utilities were paid, even though the delinquent amount increased substantially, which should have been obvious and alarming to her.

The RHC could not have unilaterally rectified the matter because CUC policy requires the express concurrence of the current account holder before a transfer can be made.

It is an implied condition of every contract that one party will not prevent performance by the other party, and it follows that a contracting party who prevents the other party from performing under the contract cannot urge or avail himself of the nonperformance which he himself has brought about. (17A Am Jur 2d, Contracts, §702)

The RHC Director was negligent before becoming the Director, and after becoming Director took advantage of her position through self-dealing, which is a serious violation. As Director, she should have protected the Government and RHC by attempting to collect from the employ-

ees who owed the utility bills. One of the employees still works at RHC and has expressed a willingness to pay when she receives the billings. The Director has violated the public trust by taking action in her own self-interest instead of protecting the interest of RHC. The Mayor should require the RHC Director to return the money.

On Claims for Involuntary Lease Extension and Repairs

It is the Mayor of Rota's opinion that the RHC Director, as one of the owners, has a legitimate claim for the \$4,000 rental and even more so for the cost of repairs. The Director need only provide a sworn affidavit in place of receipts to support the cost of repair.

The Mayor stated that RHC breached clauses 9 and 12 of the Leasehold Agreement which provides, in part, that the lessee agrees to return the premises to the lessor in the same condition as when received. He stated that he cannot find any legal basis requiring the owners to accept the return of possession of the apartment, as was stated in the audit findings.

OPA Comments

RHC did not violate Section 9 or 12 of the Leasehold Agreement because at the time the leased premises were returned, no damage was noted beyond normal wear and tear, except for two items for which the former tenant accepted responsibility. There was thus no justification for the owners not to accept the return of possession.

The RHC Director violated procurement ethical standards by purchasing the washing machine from herself.

RHC returned possession of the apartment to the owners in November 1995. The owners therefore had possession of the apartment when the damage took place and also during the time for which they are claiming rent. RHC does not owe the owners and the \$9,000 in claims should not be paid.

Status of Recommendation 3

We consider *Recommendation 3 open*. The additional information needed to consider the recommendation closed is presented in **APPENDIX D**.

II. PROCUREMENT OF A WASHING MACHINE

During her term, the current Director of RHC ordered the replacement of the hospital's broken washing machine. Since Rota funds were not sufficient to cover the cost of a replacement machine, the RHC Director decided to bring a washing machine from one of her apartments to the hospital. On August 13, 1996, the RHC Director prepared a purchase requisition for \$700 which, we were told, includes the original purchase price of the washing machine and the cost of freight and handling. However, no documentation was submitted to support the \$700 claimed cost or the age of the machine.

Ethics Violation

It is a breach of procurement ethical standards for any employee to participate directly or indirectly in a pro-

urement when the employee knows that the employee or any member of the family has a financial interest pertaining to the procurement. Our audit showed, however, that the current director of RHC requested DOF-Rota to certify funds to reimburse the original purchase price, plus freight and handling, of a washing machine owned by the RHC Director without providing any proof of its cost or the age of the machine.

This occurred because the RHC Director allowed the transfer of a washing machine to RHC from one of her apartments at the time when the hospital's machine had broke down because there were not sufficient RHC funds to cover the cost of a new machine. She took this action without seeking advice or assistance from DPH. As a result, the RHC Director violated procurement ethical standards and appears to be claiming more than the value of the machine.

Accordingly, we recommend that:

- (4) the Secretary of Finance deny the claim of the Director of RHC;
- (5) the Mayor of Rota consider what administrative sanctions should be applied for violation of the ethical standards.

DOF RESPONSE AND OPA COMMENTS

The Secretary of Finance concurred with the findings and recommendation and stated he would request the

Mayor of Rota to adopt the findings with respect to "self-dealing" and, through the Resident Department Head of Finance, deny the claim no later than February 28, 1997.

OPA Comments

We consider *Recommendation 4 resolved*. The additional information needed to consider the recommendations closed is presented in **APPENDIX D**.

OFFICE OF THE MAYOR RESPONSE AND OPA COMMENTS

The Mayor of Rota stated that RHC should be given the opportunity to resubmit the purchase requisition, with sole source or emergency procurement justification, and allow the Department of Finance to judge fairly if the RHC Director should be paid for her machine. He believes that the

RHC Director can provide the required written justification for sole source or emergency procurement of the washing machine which the RHC Director apparently neglected to prepare because there was no RHC budget.

OPA Comments

We consider *Recommendation 5 resolved*. We agree with the Mayor that the RHC Director should be given the opportunity to resubmit justification for the purchase. Although a violation occurred, it appears that it was not made in bad faith, and RHC benefited from the Director's action by providing laundry facilities which were urgently needed.

The additional information needed to consider the recommendations closed are presented in **APPENDIX D**.

Introduction

Background

On July 28, 1994, the Rota Health Center (RHC) entered into a leasehold agreement with the husband of the current Director of RHC. At that time, the current Director was not yet employed by the Government. The subject of the lease was a three-bedroom concrete apartment to house RHC's personnel. It had a fixed monthly rental of \$800 excluding the cost of utilities, e.g., water, electricity, garbage collection and all other services.

The first RHC employee who occupied the apartment was an RHC doctor and his family. According to the current Deputy Director of RHC, the apartment was new and was furnished with basic appliances when the doctor moved in. This was documented in an entry inventory inspection report which the Deputy Director prepared.

According to the Deputy Director, an exit inventory inspection was conducted in November 1994 when the doctor moved out at the completion of his employment contract. A copy of this inspection report, however, could not be located in the records of RHC. The Deputy Director stated that the inspection did not disclose any material damage to the furniture or to the apartment.

In February 1995, another RHC employee and her family took over the apartment. During the entry inventory inspection by the Deputy Director and the new occupant, they noted additional furniture which the Deputy Director believes were sold by the doctor (former occupant) to the current Director of RHC when the doctor moved out.

Six months later, the second occupant and her family moved out. On October 2, 1995, the Deputy Director conducted another inspection and noted that a bed frame and a light fixture globe were broken. The second occupant agreed to pay for the cost of these items but at the time of our audit she had not received a billing.

On September 18, 1995, the Deputy Director notified the apartment owners of RHC's intent to terminate the lease because the new RHC employee who had been expected to occupy the apartment had selected other housing. In fact, however, the lease was not terminated. The Acting Director of RHC at that time decided to extend the lease to November 15, 1995 for the house to be used as temporary lodging for visiting physicians.

On or about November 8, 1995, a final inventory inspection was conducted by the Deputy Director. We were informed that there were no problems noted other than the ones listed on the exit inventory inspection report (dated October 2, 1995) for the second occupant, but the Deputy Director could not locate a copy of the report in the records of the hospital.

According to the Deputy Director, the key to the apartment was delivered to the owners shortly thereafter, but the owners refused to accept it. The Commonwealth Utilities Corporation (CUC) had shut off the power and water supply to the apartment because of unpaid bills amounting to \$4,489.55. The owner stated that this constituted a violation of the agreement because the agreement provided that at the time the lease ended, the apartment would be returned to them (the lessor) in "good and rentable condition." In her opinion, the absence of utility services rendered the apartment not in "good and rentable condition". She further added that since RHC cleared its employees without ensuring that their accounts were settled, RHC must assume this liability to CUC. According to her, until the whole amount has been settled, RHC, in effect, still leases the apartment. However, the RHC Director, personally retained control over the utility bills by keeping the account in her name both before and after she became RHC Director, causing CUC to give clearance to the tenants vacating the apartment.

On March 6, 1996, at the current RHC Director's request, a check from RHC's funds amounting to \$4,489.55 was issued to CUC in full settlement of the bill without attempting to collect from the former occupants.

Subsequently, the RHC Director said she asked the Administrative Assistant of RHC to make a final inspection of the apartment. To avoid any speculation of impropriety, the RHC Director (as one of the owners) appointed a manager to represent her interest in the inspection. However, neither the Manager nor the RHC Director could provide a copy of this inspection report, which was prepared by the RHC Administrative Assistant. We learned from the Manager and the RHC Director that the sole copy was filed as part of the hospital records and could not be located at that time. After the inspection, a bill in the amount of \$5,373 was sent by the Manager to RHC for the cost of cleaning, repair, and replacement of various furniture in the apartment.

According to the Manager, the damages to the items listed on the bill were not the result of normal wear and tear but were due to negligence on the part of RHC, in that RHC had left one of the apartment windows open which allowed rain and moisture to enter causing mold to grow on the walls and on some of the furniture. The amount was based on his estimate of what his employees' time

was worth to do the job, and the purchase price of similar replacement furniture items in Rota and Guam which the RHC Director (as owner) had provided.

Subsequently, the Director of RHC reduced the bill from \$5,373 to \$5,000 and requested the Department of Finance (DOF- Rota) to certify funds to pay (1) the \$5,000 worth of damages to the leased apartment (**APPENDIX A**) and (2) the \$4,000 due to her husband, representing the rental costs from November 1995 to March 1996.

During her term, the Director of RHC ordered the replacement of the hospital's washing machine that was broken. But because funds were not sufficient to cover the cost of a new machine, the RHC Director decided to bring a washing machine from one of her apartments to the hospital. On August 13, 1996, the RHC Director prepared a purchase requisition for \$700 which, we were told, include the original purchase price of the washing machine and the cost of freight and handling.

Objectives, Scope, and Methodology

The objectives of our audit were to determine whether the current RHC Director had a conflict of interest in (1) requesting the payment of \$4,489.55 from RHC's funds to settle the apartment's account with CUC, (2) requesting the DOF-Rota to certify funds to pay \$5,000 worth of damages to the leased apartment and \$4,000 rental from November 1995 to March 1996, and (3) requesting DOF-Rota to certify funds to pay for the original purchase price of the washing machine.

Our audit was limited mainly to interviews with employees of the Rota Health Center and examination of pertinent documents submitted. We performed the audit in October 1996 at the Public Health Office in Rota.

Our audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States of America. Accordingly, we included such tests of records and other auditing procedures as we deemed necessary in the circumstances.

Findings and Recommendations

Part I - Lease-Related Claims

Ethics Violation

C CNMI Procurement Regulations prohibit any employee from participating directly or indirectly in a procurement, or to use their public position to obtain private financial gain or other personal or private advantage, direct or indirect, for a relative or for an entity in which the public official or employee has a present or potential economic interest. Our audit showed however, that the current Director of RHC violated the ethical standards in public contracting provisions of the CNMI Procurement Regulations by (1) ordering the payment of \$4,282.02 from RHC's funds to settle the utility bills of two RHC employees who occupied the apartment leased by the Director's spouse to RHC; even though the Director had prevented RHC from collecting utility payments from the employees by retaining the utility billing in her name; and upon becoming RHC Director ordered payment from the Government to CUC without attempting to collect from the employees (one of whom is still an RHC employee and has agreed to pay her share), and (2) requesting DOF-Rota to certify funds to pay the cost of damages to the leased apartment and rental payment from November 1995 to March 1996 even though possession of the apartment had been returned to her spouse in November 1995. This occurred because the current Director of Rota Health Center abused her power and authority, which resulted in undue payment of \$4,282.02 by the Government and claims of \$9,000 for damages and additional rent for the apartment.

Violation of Ethics in Public Contracting

Under Section 6-204 of the CNMI Procurement Regulations on Ethics in Public Contracting, it is a breach of ethical standards for any employee to participate directly or indirectly¹ in a procurement² when the employee knows that the employee or any immediate family member has a financial interest pertaining to the procurement.

¹ Section 6-101 of CNMI Procurement Regulations defines direct or indirect participation as "involvement through a decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

² Section 1-201 of CNMI Procurement Regulations defines procurement as "...buying, purchasing, renting, leasing or acquiring construction, goods or services. It also includes all functions pertaining to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and *all phases of contract administration....*" (Emphasis added)

Moreover, Section 6-208(3) provides that it is a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than government, in connection with any contract or claim ...in which an employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the government is a party or has a direct and substantial interest.

Section 6-211 of the CNMI Procurement Regulations provides civil and administrative remedies against any person who violates provisions of the Ethics in Public Contracting section of the CNMI Procurement Regulations. Any government employee who violates a provision of these regulations is subject to adverse action as may be appropriate in his or her particular circumstance. This action includes but is not limited to reprimand, suspension without pay, termination of employment, a civil injunction, civil suit for damages or return of government money, or criminal prosecution. A contractor who violates a provision of these regulations shall be subject to a written warning of reprimand, termination of the contract, or suspension from being a contractor or subcontractor under a government contract, in addition to other penalties prescribed by law.

Payment of Utility Bills of RHC Employees from RHC Funds

Our audit showed that the current Director of RHC ordered the payment of utility bills amounting to \$4,489.55 from RHC funds to settle utility bills of two RHC employees who previously occupied the apartment leased by RHC from the Director's husband.

As provided in Section 9 of the Leasehold Agreement regarding utilities, "...Lessee shall pay for all water, electricity, garbage collection and all other services supplied to the said premises, *except that upon occupancy by a government employee for housing purposes said occupant shall be responsible* for all water, electricity, garbage collection and other services supplied to the said premises during said occupancy....." (Emphasis added)

In our review of the billing history from CUC, we learned that a large portion of these utility charges were for usage by the first and second occupants. CUC billing statements, however, showed that the CUC customer number for the apartment account was at all times in the name of the current RHC Director, as one of the owners, and was never transferred to the names of the occupants. This made it possible for the first occupant, who is now believed to be living in Florida, to obtain an exit clearance from CUC without paying the bill.

We were told by the second occupant that shortly after moving into the apartment, she had requested CUC to have the account transferred into her name but CUC advised her that they could not do so until the outstanding balance was settled. She advised the owners about this, but it was only several months later, after CUC cut off the supply of power and water, that the occupant and the owner formally met with CUC. In that meeting, CUC agreed to reconnect, provided that there was partial payment on the outstanding account. CUC also agreed to provide future billing statements to the second occupant. The second occupant made a partial payment of about \$150 but contrary to what was agreed during the meeting, the subsequent billing statements were not sent to her directly. Nonetheless, she had agreed to pay the utility charges pertaining to the period of her stay.

In an interview with the Rota postmaster, we learned that after the first occupant moved to Florida, the CUC bills continued to be sent to the owner. The owner, however, kept returning the bills to the Post Office saying that they were not hers but those of the prior occupant. Because of this, the postmaster decided to return all the billings to CUC-Rota.

As the person to whom the account was originally registered, the owner should have ensured that the CUC account was transferred into the names of the respective tenants. Had the transfers been made, the first and second occupants would have been held accountable.

Moreover, there is no indication that the owner pursued collection from either the first or second occupants. The second occupant is currently the Physicians' Assistant at RHC, and we were informed that she has not received any billing as of audit date. In our review of the billing history and based on the available information, the amounts which should be collected from the first and second occupants are \$3,040 and \$1,203, respectively³. This represents the total consumption during the period of their occupancy plus 1% per month penalty for late payment, before the application of security deposit of \$130.

In addition, CUC-Rota should have immediately enforced the necessary collection or disconnection actions. It was only after a year that CUC-Rota charged the 1% penalty for the past-due balance of the apartment account and eventually disconnected service, which is not in conformity with Parts 17 and 18 of the Electric Power Regulations of CUC. These sections provide that all bills are considered past due if unpaid fifteen (15) days after presentation, and

³ Difference from the total amount recoverable from the RHC Director of \$4,282.02 represents overpayment made to CUC of \$39.

that all customers with past due bills shall be subject to disconnection for nonpayment.

Request to Pay Repair Costs and Rental for Apartment Owned by the Director's Husband

The Director directly participated in the settlement of a claim when she signed the Purchase Requisition (PR) for the settlement of the \$5,000 claim for apartment repairs in favor of herself and her husband. Moreover, we learned from the Deputy Director of RHC, who signed the PR justification for the \$4,000 claim for housing rental, that she was asked by the Director to sign the justification.

In order to avoid a violation of the Procurement Regulations relating to Ethics in Procurement or the appearance of conflict of interest, the Director of RHC should have removed herself from signing or otherwise participating in any action related to the settlement of these claims.

We also noted that the initial claim for the apartment repairs was \$5,373. The Director, however, later instructed that the amount be reduced to \$5,000. There was no written explanation for the reduction, but the RHC Director stated she had reduced this amount just to round it off in favor of the government. However, the CNMI Procurement Regulations allow purchase orders of \$5,000 or less to be processed in Rota while any requisition over \$5,000 must be processed and paid through the Department of Finance in Saipan. It appears to us that the amount of the claim was reduced in order to circumvent the requirement that the claim to be processed in Saipan.

Conclusion and Recommendations

In our opinion, the Director's claims should be denied. At the time the premises were inspected in November 1995, no damage was noted beyond normal wear and tear, except for two items for which the former tenant accepted responsibility. A March 1996 inspection showed that the damages occurred after RHC terminated the lease in November 1995, and RHC is not liable because the Director or her spouse are required to accept the return of possession when tendered. The owners have a duty to protect their property after possession is returned to them.

In addition, because of the apparent abuse of government power and authority, the current Director of RHC violated the CNMI Procurement Regulations in (1) ordering the payment of \$4,282.02 from RHC's funds to settle the utility bills of two RHC employees who had previously occupied the apartment leased to RHC

by her spouse, and (2) requesting DOF-Rota to certify funds to pay \$5,000 worth of damages to the leased apartment and \$4,000 rental from November 1995 to March 1996.

Accordingly, we recommend that the Secretary of DOF:

- (1) require the current Director of RHC to return the amount of \$4,282.02 taken from RHC finds; this amount should be collected from the tenants, not from the Government.

The amount to be recouped was reduced to \$4,282.02 from \$4,489.55 because, as pointed out by the Secretary of DOF on the draft report, \$208 was actually the responsibility of RHC.

- (2) deny the \$5,000 claim for repairs, and the \$4,000 claim for a non-existent lease extension.

Moreover, we recommend that (3) the Mayor of Rota consider what administrative sanctions should be applied for violations of the Ethics in Procurement provisions.

DEPARTMENT OF FINANCE RESPONSE AND OPA'S COMMENTS

The Secretary of Finance concurred with Recommendations 1 and 2.

OPA Comments

We consider *Recommendations 1 and 2 resolved*. We concur with the Secretary of DOF's opinion that the utility charges amounting to \$208 incurred by the visiting physicians should be deducted from the \$4,489.55 due from the RHC Director, since these physicians are not employees of RHC but of CHC-Saipan. This reduces the amount owed by the RHC Director to \$4,282.02.

The additional information needed to consider the recommendations closed is presented in **APPENDIX D**.

OFFICE OF THE MAYOR RESPONSE AND OPA COMMENTS

General Comments on the Findings

In his reply dated January 17, 1997, the Mayor of Rota stated that there are many instances in which Commonwealth law allows those with expenditure or requesting authority to legitimately purchase goods and services from their family. According to him, the legislature made our conflict of interest laws flexible enough to accommodate "familial realities."

OPA Comments

As far as we can determine, the CNMI conflict of interest laws are exactly the opposite of the Mayor's statement. For instance, the Ethics in Public Contracting Section 6-204 (1a) on Employee Conflict of Interest states that "...It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that: the employee or any member or the employee's immediate family has a financial interest pertaining to the procurement....."

Provisions in the Ethics Act are virtually identical. We have not found any instance where CNMI conflict of interest laws allow those with expenditure or requesting authority to legitimately purchase goods and services from their family. In fact, Public Law 2-48 establishing the Commonwealth Ports Authority made such activities a felony. We suggest that the Mayor and his staff familiarize themselves with these laws and enforce them accordingly.

OPA's Audit Conclusions are Administrative, not Judicial

The Mayor also stated that the draft audit report reaches legal conclusions about the legitimacy of the landlord's claims which "seems outside the Auditor's brief." He added that "the auditor lacks a charter to enter these judicial waters."

OPA Comments

The Office of the Public Auditor (OPA) was established as an independent agency of the CNMI Government mainly to audit the receipt, possession, and disbursement of public funds. Incidental to the discharge of its function, OPA frequently interprets laws and regulations. The Office of the Public Auditor renders no judicial decisions. Our opinions, and even orders we sometimes issue, e.g., cases of appeals on bid protests, are administrative in nature. All our opinions and orders are subject to review by the courts if sought.

Office of the Mayor Response on Recommendation 3 - Conflicts of Interest

The Mayor of Rota said that he "agrees in principal on the conflict (of interests)." He further said that it would have been better for the Resident Director to delegate the responsibility to another person than to handle the apartment claims herself, and stated that he will implement corrective action to preclude recurrence of these problems in the future.

OPA Comments

CNMI Laws and Regulations are clear on conflict of interest matters, and the Mayor is responsible for implementing appropriate administrative penalties. The Mayor's statement that he will implement corrective action is welcomed for future guidance, but is insufficient for carrying out his current responsibilities for the violations which have already taken place.

Office of the Mayor Response on Recommendation 3 - Payments Not Owed by RHC Made and Requested to Self and Spouse

The Mayor stated that he "respectfully disagrees with the report on legitimacy (of claims)." He further stated that "the net outcome of their position is that bills got paid that should have been paid, the public trust was not violated, public moneys went to valid debts and no Rota family was unjustifiably enriched. Any employment sanctions against the RHC Director must take these excusing factors into consideration."

OPA Comments

The Mayor apparently has not grasped the seriousness of the ethics violations. Section 6-204 (2) states that upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Chief (Director of Procurement and Supply) a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction. Neither of these requirements were complied with, and the violations are subject to 6 CMC Div 3 Chapter 2, Offenses Against the Commonwealth, specifically §3202, Misconduct in Public Office, which states that "...Every person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office, and upon conviction thereof may be

imprisoned for a period of not more than one year, or fined not more than \$1,000, or both...."

In addition, Section 6-211 of the CNMI Procurement Regulations specifies penalties for such violations to be reprimand, suspension, dismissal of employment, termination, civil injunction, civil suit for damages or return of government money or criminal prosecution.

We suggest that the Mayor carry out his responsibility in regard to those requirements and not dismiss such matters as minor. Any misconduct imposing such severe penalties is not minor.

On Payment of Utility Charges from RHC Funds

The Mayor of Rota believes that it is RHC's responsibility to pay the \$4,489.55 utility charges and "The RHC Director, as the owner, should not be asked to repay this money." He stated that it was never the owners' responsibility to see that the government employees paid the CUC bills.

OPA Comments

The Mayor stated what *should* have happened but has ignored the facts. The RHC Director, before becoming the RHC Director, prevented the RHC from collecting from the former occupants by retaining the account in her own name and without making any attempt to ensure that the utilities were paid, even though the delinquent amount increased substantially, which should have been obvious and alarming to her.

The RHC could not have unilaterally rectified the matter because CUC policy requires the express concurrence of the current account holder before a transfer can be made.

It is an implied condition of every contract that one party will not prevent performance by the other party, and it follows that a contracting party who prevents the other party from performing under the contract cannot urge or avail himself of the nonperformance which he himself has brought about (17A Am Jur 2d, Contracts, §702).

The RHC Director was negligent before becoming the Director, and after becoming Director took advantage of her position through self-dealing, which is a serious violation. As Director, she should have protected the Government and RHC by attempting to collect from the employees who owed the utility bills. One of the employees still works at RHC and has expressed a willingness to pay when she receives the billings. The Director has violated the public trust

by taking action in her own self-interest instead of protecting the interest of RHC. The Mayor should require the RHC Director to return the money.

On Claims for Involuntary Lease Extension and Repairs

It is the Mayor of Rota's opinion that the RHC Director, as one of the owners, has a legitimate claim for the \$4,000 rental and even more so for the cost of repairs. The Director need only provide a sworn affidavit in place of receipts to support the cost of repair.

The Mayor stated that RHC breached clauses 9 and 12 of the Leasehold Agreement which provides, in part, that the lessee agrees to return the premises to the lessor in the same condition as when received. He stated that he cannot find any legal basis requiring the owners to accept the return of possession of the apartment, as was stated in the audit findings.

OPA Comments

RHC did not violate Section 9 or 12 of the Leasehold Agreement because at the time the leased premises were returned, no damage was noted beyond normal wear and tear, except for two items for which the former tenant accepted responsibility. There was thus no justification for the owners not to accept the return of possession. RHC returned possession of the apartment to the owners in November 1995. The owners therefore had possession of the apartment when the damage took place and also during the time for which they are claiming rent. RHC does not owe the owners and the \$9,000 in claims should not be paid.

Status of Recommendation 3

We consider *Recommendation 3 open*. The additional information needed to consider the recommendation closed is presented in **APPENDIX D**.

Part II - Procurement of A Washing Machine

Existence of Conflict of Interest It is a breach of procurement ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that the employee or any immediate family member has a financial interest pertaining to the procurement. Our audit showed, however, that the current director of RHC requested DOF-Rota to certify funds to reimburse the original purchase price, plus freight and handling, of a washing machine owned by her, without providing any proof of its cost or the age of the machine. This occurred because the RHC director allowed the transfer of a washing machine

to RHC from one of her apartments at a time when the hospital's machine had broken down and there were not sufficient RHC funds to cover the cost of a new machine. She took this action without seeking advice or assistance from DPH. As a result, the RHC Director violated procurement ethical standards and appears to be claiming more than the value of the machine.

Violation of Ethics in Public Contracting

Section 6-204 of the CNMI Procurement Regulations provides that it is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that the employee or any immediate family member has a financial interest pertaining to the procurement.

Procurement of A Washing Machine from the RHC Director

The current Director of RHC arranged for the transfer of a washing machine from one of her apartments for use by the hospital. According to the Director, this happened during a time when the hospital's machine broke down and there were not sufficient RHC funds to cover the cost of a new machine.

A Department of Public Health (DPH) Official told us that the Director should have had prior consultations with the Rota Mayor's Office, which has the expenditure authority, or with the Commonwealth Health Center (CHC) Saipan, which is responsible for establishing policies and procedures for procurement at RHC. These consultations could have addressed the matter properly.

Moreover, our review of the purchase requisition showed that the reimbursement was not supported by an invoice or any other proof of purchase. The Director told us that the purchase price of \$700 included a \$200 freight and handling charge for transporting the machine from Guam but that she had no documentation for the purchase.

Conclusion and Recommendations

The RHC Director violated procurement ethical standards by purchasing the washing machine from herself, and violated other procurement regulations by claiming \$700 with no supporting documentation.

Accordingly, we recommend that:

- (1) the Secretary of Finance deny the claim of the Director of RHC;
- (2) the Mayor of Rota consider what administrative sanctions should be applied for violation of the ethical standards.

DEPARTMENT OF FINANCE RESPONSE AND OPA COMMENTS

The Secretary of Finance concurred with the findings and recommendation and stated he would request the Mayor of Rota to adopt the findings with respect to "self dealing" and, through the Resident Department Head of Finance, deny the claim no later than February 28, 1997.

OPA Comments

We consider *Recommendation 4 resolved*. The additional information needed to consider the recommendations closed is presented in **APPENDIX D**.

OFFICE OF THE MAYOR RESPONSE AND OPA COMMENTS

The Mayor of Rota stated that RHC should be given the opportunity to resubmit the purchase requisition, with sole source or emergency procurement justification, and allow the Department Finance to judge fairly if the RHC Director should be paid for her machine. He believes that the RHC Director can provide the required written justification for sole source or emergency procurement of the washing machine which the RHC Director apparently neglected to prepare because there was no RHC budget.

OPA Comments

We consider *Recommendation 5 resolved*. We agree with the Mayor that the RHC Director should be given the opportunity to resubmit justification for the purchase. Although a violation occurred, it appears that it was not made in bad faith, and RHC benefitted from the Director's action by providing laundry facilities which were urgently needed.

The additional information needed to consider the recommendations closed are presented in **APPENDIX D**.

Note: Appendices A to C, which contain the Purchase Requisition for the repair of the house contract and the responses of the Secretary of Finance and the Mayor of Rota, were intentionally omitted to reduce this publication's file size. If you wish, these appendices are available upon request. You may request these documents online at the following link:

<http://www.opacnmi.com/reports.html>

STATUS OF RECOMMENDATIONS

Recommendations	Status	Agency Response/ Additional Information or Action Required
1. Require the current Director of RHC to return the amount of \$4,282.02 taken from RHC funds.	Resolved	<p>The Secretary of Finance responded that he will request the Mayor of Rota to adopt the finding and, through the Resident Department Head of Finance, make arrangements to recover RHC funds in the exact amount from the RHC Director, by whatever means most appropriate not later than February 28, 1997.</p> <p><u>OPA Comment</u> The Secretary of Finance should provide OPA a copy of the memo requiring the current Director of RHC to return the amount taken from RHC funds and the results of the arrangements made with the Rota Department Head of Finance to recover said amount. In addition, since the Mayor of Rota indicated reluctance to implement this recommendation the Secretary of Finance should take a more active role in assuring that the money is returned such as requiring the Resident Department Head of Finance to take the required action.</p>
2. Deny the \$5,000 claim for repairs, and the \$4,000 amount claimed for a non-existent lease extension.	Resolved	<p>The Secretary of Finance responded that he will request the Mayor of Rota to adopt the findings and, through the Resident Department Head of Finance, deny the claims not later than February 28, 1997.</p> <p><u>OPA Comment</u> The Secretary of Finance should provide OPA a copy of the memo requesting the Mayor of Rota through the Resident Department Head of Finance to deny the claims.</p>

Recommendations	Status	Agency Response/ Additional Information or Action Required
3. Mayor of Rota consider what administrative sanctions should be applied for violations of the Ethics in Procurement provisions.	Open	<p>In addition, since the Mayor of Rota indicated reluctance to implement this recommendation the Secretary of Finance should take more active role in assuring that the money is returned such as requiring the Resident Department Head of Finance to take the required action.</p> <p>The Mayor of Rota should take action as required and determine what specific administrative sanctions should be applied.</p> <p><u>OPA Comment</u> The Mayor of Rota should provide OPA with a copy of the decision made.</p>
4. Deny the claim of the Director of RHC for reimbursement of the cost of the washing machine.	Resolved	<p>The Secretary of Finance responded that he will request the Mayor of Rota adopt the findings and, through the Resident Department Head of Finance, deny the claims not later than February 28, 1997.</p> <p><u>OPA Comment</u> The Secretary of Finance should provide OPA a copy of the memo requesting the Mayor of Rota through the Resident Department Head of Finance to deny the claims.</p>
5. Require the RHC Director to resubmit justification for the purchase.	Resolved	<p>The Mayor of Rota should provide OPA with a copy of the justification.</p>