

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 228

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH FORFEITURE OF ALL BENEFITS UNDER THE LAW OF ASSOCIATE COMMISSIONER MARIANO A. MENDIETA OF THE PROFESSIONAL REGULATION COMMISSION

This involves two (2) administrative cases filed against Associate Commissioner Mariano A. Mendieta of the Professional Regulation Commission for violation of Section 3 (a) and (e) of the Anti- Graft and Corrupt Practices Act (Republic Act No. 3019).

The first case involves a complaint filed by Julio B. Francia, former Chairman of the Professional Regulation Commission against respondent Mendieta for his actuations relative to the application for a permit to operate a school of Physical Therapy by the Fatima College of Medicine. It appears that sometime in 1990, Fatima applied with the Department of Education, Culture and Sports (DECS) for a permit to offer Physical Therapy as a school course. Pursuant to Section 5 (c) of Republic Act 5680 which states: "No school, college or university shall be authorized to offer courses in physical therapy or occupational therapy without the favorable written recommendation of the Board", DECS requested the Board of Physical and Occupational Therapy (BPOT) to make its recommendation on whether or not to grant Fatima's application.

After twice inspecting and evaluating the facilities and proposed program of the Bachelor of Science in Physical Therapy course of Fatima, BPOT found that the school still lacked the necessary preparation and organization to operate a school of Physical Therapy and thus, did not recommend the granting of temporary permit for School Year 1990-1991.

Despite the BPOT's recommendation, however, the DECS issued a temporary permit valid for the year 1990-1991 authorizing Fatima to conduct the 1st and 2nd years of the Physical Therapy course.

Thereafter, BPOT issued an unnumbered and undated Resolution, series of 1990, stating among others:

x x x x x

"WHEREAS, considering that the facilities and program of the BSPT are deficient and that the issuance of the temporary permit is in violation of Section 5, of Republic Act No. 5680, the Board recommends that the temporary permit No. 021 dated May 3, 1990 issued by DECS to the College of Physical Therapy, Fatima College, be cancelled for the protection of the students.

IN REPLYING, PLEASE CITE:



NOW, THEREFORE, after approval of this resolution and due to the foregoing violation and non-compliance of the pre-requisite requirement of the law, the Board requests the Commission to endorse the cancellation of the temporary permit No. 021 issued to the Physical Therapy Department of Fatima College.

Done in the City of Manila, this day of , 199 .

(signed)
ROBERTO D. LIM, M.D.
Chairman

(signed)
TERESITA S. CASTOR
Member

(signed)
AIDA AGNES Q. ESTRADA
Member

ATTESTED:

(signed)
SALUD M. SAHAGUN
Board Secretary V

APPROVED:

JULIO B. FRANCIA, JR.
Commission Chairman

(signed) 9/3/90
HIPOLITA A.
ORDINARIO
Commission Member

MARIANO A. MENDIETA
Commission Member

The aforequoted resolution was signed by Associate Commissioner Hipolita A. Ordinario on September 3, 1990 and thereafter endorsed to respondent Mendieta for his concurrence or dissent.

In the meantime, Dean Editha A. Tuason, M.D. of Fatima, wrote respondent Mendieta informing him, among others, that some deficiencies which were endorsed to her have "been dealt with and somehow corrected". She ended the letter by saying that "we welcome any PRC representative that you may wish to send at their most convenient time."

Instead of acting on the BPOT's undated and unnumbered Resolution, respondent Mendieta issued a Memorandum to one of the lawyers in his staff, Atty. Eduardo Sanchez, ordering him to inspect and investigate the Physical Therapy Course of Fatima. After finding that Fatima religiously complied with the suggestions of the BPOT and has expressed its willingness to provide whatever additional facilities may be required by the Board, Atty. Sanchez recommended that the college be allowed to operate. On this basis, respondent Mendieta issued a Memorandum to BPOT, to wit:

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"After a study of the recommendation of the Board and the Investigation Report of Atty. Sanchez, the undersigned is convinced that the Physical Therapy Department of the Fatima College has complied with the requirements of the Board.

x x x

IN VIEW OF THE FOREGOING, it is recommended that the matter be considered closed."

In the present administrative complaint, complainant Julio B. Francia charges that:

"(1) Respondent Mendieta sat on the BPOT's unnumbered and undated Resolution, series of 1990, which was signed by Assistant Commissioner Hipolita Ordinario, while Fatima, apparently forewarned of its contents tried to remedy or correct the situation, which eventually led to the Fatima Dean's letter dated September 19, 1990 informing respondent that it had "somehow corrected" the deficiencies in its physical therapy course;

(2) Respondent Mendieta, acting on his own, ordered a lawyer of his staff Atty. Eduardo C. Sanchez (whose appointment was not yet approved by the Civil Service Commission) to conduct an inspection of the Fatima facilities; respondent Mendieta, acting on his own and without informing the other members of the PRC, issued a Memorandum to BPOT dated October 17, 1990, recommending that the matter be considered closed;

(3) Respondent Mendieta continued to suppress the unnumbered and undated but signed Resolution of BPOT by not forwarding the same to PRC Chairman (herein complainant) thereby allowing Fatima to operate a deficient Physical Therapy Department;

(4) Respondent Mendieta is guilty of gross misconduct for aborting and effectively voiding the BPOT's unanimous Resolution requesting the DECS, through the PRC to cancel FATIMA's permit and for providing Fatima, through the use of his office, the means to supplant the BPOT's adverse findings;

(5) Respondent usurped the authority of the PRC by (a) keeping for himself FATIMA's supposed official request for inspection; (b) unilaterally ordering the conduct of such an inspection; and (c) unilaterally making official recommendation to the BPOT on how it should treat its decision to ask the DECS for cancellation of Fatima's temporary permit, thus violating Section 3 of P.D. 223 (PRC Charter); and

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(6) These actuations of respondent are violative of RA 3019, Section 3 paragraphs (a) and (e), quoted hereunder:

“Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and REGULATION duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

To counter the charges against him, respondent Mendieta set up the following defenses:

“(1) When the undated and unnumbered Resolution of BPOT was referred to him by then PRC Associate Commissioner Ordinario, it was a matter that falls within his assigned task in the PRC, that is, Standard and Inspection Division and the Legal Division. The working arrangement within the PRC is that the three (3) members have designated functions. Chairman Francia was to take charge of the Rating and Examinations Division; then Commissioner Ordinario was in-charge of Administrative and Financial Division; and himself, the Standard and Inspection Division and the Legal Division;

(2) Pursuant to such working arrangement, the matter of the BPOT Resolution for the Cancellation of Temporary Permit No. 021 is within his jurisdiction, thus, he took the preliminary action and exercised general supervision thereof by assigning Atty. Sanchez to conduct the ocular inspection of the school;

(3) Atty. Sanchez, contrary to complainant's claim, was acting within the scope of his authority according to Section 8 of PD 807 (Civil Service Decree of the Philippines), an appointment shall take effect

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immediately when the appointee assumes his duties and shall remain effective until it is disapproved by the Chairman;

(4) He could not have suppressed the BPOT Resolution because after the inspection report of Atty. Sanchez, he prepared a Memorandum for the PRC recommending the disapproval of the BPOT Resolution, attaching thereto Fatima's request for inspection and the detailed report of Atty. Sanchez. Then Assistant Commissioner Ordinario forwarded the documents to then PRC Chairman Francia;

(5) Fatima School of Physical Therapy continued to operate until the present time without BPOT or Chairman Francia making any protest;

(6) It was then Chairman Francia who usurped the powers of PRC when he unilaterally appointed four (4) employees to different positions in the PRC and endorsed appointments to the Regulatory Boards;

(7) He did not cause undue injury to any party or to the government. In fact, had he not conducted the investigation, the private parties would have suffered an irreparable injury since they were already enrolled; and

(8) There was no partiality, bad faith or inexcusable negligence in conducting the ocular inspection as he was just being fair giving Fatima the chance to disprove or to show its sincerity by complying with the requirements on deficiencies;"

After due investigation, the Presidential Commission Against Graft and Corruption (PCAGC) in its Resolution dated June 7, 1995 made the following findings:

"It appears that the main defense of respondent Mendieta is that in accordance with the working arrangement within the PRC, the matter of the BPOT's Resolution recommending the cancellation of the Fatima's temporary permit is well within his assigned task, that is, the Standard and Inspection Division. Pursuant to such arrangement, he directed Atty. Eduardo Sanchez a member of his staff, to conduct the ocular inspection of Fatima, on the basis of which he issued a Memorandum to BPOT dated October 17, 1990 with the recommendation that the matter be considered closed. Furthermore, he alleges that he could not have suppressed the aforesaid BPOT resolution because after the inspection report of Atty. Sanchez, he prepared a Memorandum for the PRC recommending the disapproval of the BPOT Resolution (recommending cancellation of permit) attaching thereto FATIMA's request for inspection and the detailed report of Atty. Sanchez. This Memorandum was allegedly given to Assistant Commissioner Ordinario who then forwarded the

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same to the PRC Chairman Julio Francia. Thus, respondent Mendieta claimed that he could not be held liable for the charges alleged by complainant Francia.

The working arrangement alluded to is not denied. Such working arrangement, however, should be taken in its proper context with Sec. 3 of the PRC Charter, (P.L.D. 223), which explicitly provides that the Commissioner who shall be the Chairman of the Commission, and the Associate Commissioners as members thereof shall, as a body, exercise administrative, executive and policy making functions for the whole agency. It is perceived by this Commission that the working arrangement, as in any other administrative agency, is only for expediency, i.e., to facilitate a more efficient and effective service to the public. It, however, should not be interpreted as an exclusive jurisdiction of a particular Commissioner who is no longer subject to concurrence with or dissent by the other members. When the law states "as a body", the same definitely pertains to the whole Commission. The alleged working arrangement was internal among the Commissioners, and could not in any way amend or modify the law.

The same law expressly provides that the Commission shall have the power to review, coordinate, integrate and approve the policies, resolutions, rules and regulations, orders or decisions promulgated by the various Boards with respect to the profession or occupation under their jurisdiction x x x x x (Sec. 5, par. c, P.D. 223)

Respondent does not question the power of BPOT vested by R.A. 5680, Section 5 (e) thereof, to study the condition affecting physical therapy and occupational therapy, to study and examine facilities and provide the basic curricula of any school, college or university seeking permission to open or offering physical therapy and occupational therapy program or course, and to require the employment of qualified members of the faculty in such educational institution. He could not have undermined the directive under R.A. 5680 that no school, college or university shall be authorized to offer courses in physical therapy or occupational therapy without favorable written recommendation of the Board.

In the light of this legal background, the Commission finds repondent Mendieta liable for the charges filed by the complainant Francia.

Respondent, who has been the PRC Associate Commissioner since December 1989, is well aware of the above-stated legal provisions pertaining to the functions of the PRC vis-a-vis the Board of Physical Therapy relative to the request of the schools to operate a physical therapy course. He even admits in his Counter-Affidavit that



“the BPOT’s finding and Resolutions will have to pass the approval of the Commission” (par. 1, page 4, respondent’s counter-affidavit, p. 78 records), such that he should have forwarded to PRC Chairman Francia the unnumbered and undated BPOT’s Resolution recommending the cancellation of Fatima’s temporary permit.

Evidence shows that the BPOT Resolution was forwarded to Assistant Commissioner Hipolita Ordinario who after signing the same then sent it to respondent on September 3, 1990 for his dissent or concurrence on the matter. Instead, however, of giving his opinion thereto, and giving it to PRC Chairman Julio Francia as mandated by P.D. 223 and R.A. 5680, he directed Atty. Eduardo Sanchez, one of his lawyers, to conduct the ocular re-inspection of Fatima School.

From the time respondent Mendieta received the BPOT Resolution from Associate Commissioner Hipolita Ordinario on September 3, 1990, it practically took him twenty three (23) days before issuing the memorandum (September 26, 1990) to Atty. Sanchez who conducted the ocular inspection and another five (5) days to write a Memorandum to BPOT (not to the PRC as he should have done) to consider the matter closed. In fact, in this period of the twenty three (23) days, he could have immediately signified his concurrence or dissent to the BPOT Resolution and forwarded the same to PRC Chairman Francia for the latter’s action on the same. The Commission notes that the directive for ocular inspection (September 26, 1990) came after Dean Tuason’s (of Fatima) letter of September 19, 1990 to respondent.”

x x x

Assuming arguendo that indeed his act of unilaterally directing the ocular inspection is within his assigned task, the Commission finds no reason why immediately after the inspection, he again did not inform PRC of the result of said inspection, and of his action on the matter. On the other hand, he wrote BPOT to consider the matter closed. There can be no other interpretation but to consider the acts of respondent Mendieta as favoring Fatima in his own singular way on the basis of a decision rendered by him alone.

In further defending his action and to vindicate himself from such liability, respondent now relies on his alleged Memorandum to the PRC recommending the disapproval of the BPOT’s unnumbered and undated Resolution allegedly forwarded to then Associate Commissioner Hipolita Ordinario and eventually to the PRC Chairman Julio Francia.

Evaluating the evidence and the records pertinent thereto, there is no showing that such Memorandum exists. Respondent

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presented as witness then Assistant Commissioner Hipolita Ordinario who testified the per her logbook the aforesaid Memorandum was released to PRC Chairman Julio Francia (Annex K-95, p. 335, Records). As further proof thereof, respondent insists that all the attachments to the alleged Memorandum are in the possession of complainant Francia appended to the instant complaint.

Evidence, however, does not support the claim of respondent Mendieta who under the rules of procedure must prove such allegation. The logbook of Commissioner Ordinario on page 95 thereof, refers to a "1st Endorsement with Inspection Report" and not to a Memorandum as claimed by respondent. Secondly, Associate Commissioner Hipolita Ordinario's supposed corroborative testimony contradicts her later opinion on the matter, more particularly when she issued a note to Chairman Francia in her own handwriting sometime in December 1990 that respondent Mendieta should be required to comment on the letter-complaint of BPOT because personally she did not have any knowledge of the inspection conducted by Atty. Sanchez. In fact, she has already signed the recommendation of the BPOT for the cancellation of the temporary permit of Fatima. Said witness could not have written the December 1990 letter if indeed she has already received or signed the alleged Memorandum of respondent Mendieta in October 1990. On this aspect, evidence is insufficient to support respondent's claim that he issued such a Memorandum.

Respondent Mendieta's act in unilaterally ordering Atty. Sanchez to conduct an ocular inspection constitutes a violation of P.D. 223 and R.A. 5680. It clearly appears from the circumstances in the instant case that it was the letter of Fatima School dated September 19, 1990 which moved respondent Mendieta to issue the Memorandum for the conduct of the ocular inspection of the school in clear violation of the mandate of P.D. 223 and R.A. 5680. Section 5, par. (e) thereof which provided that the BPOT shall have the power to study and examine facilities of any school, college or university seeking permission to open or offering physical therapy or occupational therapy program.

In effect, respondent allowed himself to be influenced and persuaded to violate existing laws, i.e., P.D. 223 and R.A. 5680 by ordering Atty. Sanchez to conduct the ocular inspection. This is violative of Sec. 3, par. (a) of R.A. 3019 earlier quoted.

Respondent Mendieta is likewise liable under Section 3, par. (c) of R.A. 3019 for giving a private party (Fatima) an unwarranted benefit, advantage or preference while in the discharge of his official administrative function through manifest partiality, evident bad faith or gross inexcusable negligence. Thru respondent's questionable

actuations above-described, Fatima Shcool of Physical Therapy was able to continue to operate without the favorable written recommendation of the BPOT as required by the law.

On the argument that respondent, thru his actuations, did not give any party (FATIMA) any unwarranted benefit advantage or preference considering that with or without the BPOT's recommendation for the cancellation of the temporary permit, DECS still issued and renewed the permit, is devoid of merit. Parenthetically, DECS may be liable for issuing a permit to operate without the BPOT recommendation. But that would be another case, distinguishable legally and factually from the present case.

When respondent Mendieta issued his Memorandum dated October 17, 1990 recommending to BPOT that the matter be considered closed, he completely deprived the BPOT of any procedural recourse respecting its Resolution relative to the cancellation of the Fatima's Temporary Permit. The law is very clear on the relative function of the PRC and the BPOT, that is, PRC reviews, coordinates, integrates and approves the resolutions of the various Boards with respect to the profession or occupation under their jurisdiction (P.D. 223, Section 5, par. c). By not forwarding the Resolution to PRC Chairman Francia, the legal vinculum from the BPOT to the PRC was cut, and the PRC as a collegial body had nothing more to review, coordinate, integrate and approve as required by law. This is a consequence of respondent's illicit actuations.

What then is the unwarranted benefit extended to Fatima by the actuations of respondent Mendieta? Categorically, Fatima's temporary permit was continued by DECS presumably unaware of the lack of the requirement under R.A. 5680. Had respondent not acted in such manner the BPOT Resolution would have been indorsed to the DECS by the PRC, DECS would have been informed of the non-compliance with the requirement of R.A. 5680 which would have precipitated the investigation of the matter by DECS, and possibly, the cancellation of the temporary permit. Public interest would have been protected. As it is, Fatima continued to operate despite the lack of the favorable written recommendation of BPOT as required by law."

Anent the second administrative complaint filed against respondent Mendieta, this time by incumbent PRC Chairman Hermogenes Pobre, the facts of the case are as follows:

"On June 7, 1993, the Board of Medicine (or Board, for brevity) of the PRC issued a Resolution relative to the suspicious possible anomalies in the conduct of the Physician Licensure Examinations given by the Board in February 1993 wherein the names of the top ten (10) examinees all came from

one (1) school, that is, Fatima School of Medicine. It resolved, among others, that the registration of all Fatima examinees be withheld and for PRC together with a neutral body, to initiate an investigation on the anomaly.

The said resolution was concurred in by respondent Mendieta with the following suggestions:

X X X X X

“So in line with the proposed investigation of the Physician’s Licensure Examination, it is strongly suggested that the above-mentioned anomalies be investigated together with the case at bar.

X X X X X

It is also suggested that the undersigned Commissioner be allowed to sit in the panel assigned to investigate all these anomalies to assist them in matters peculiar only to the Commission.”

Complainant alleges that respondent Mendieta on June 28, 1993 at 3:15 P.M. without stating the reason issued a Memorandum Order to the Chief of the Registration Division of the PRC directing him to give respondent a list of at least ten (10) examinees of the February 1993 Physician’s Licensure Examinations, with the name of their schools, who have already taken their oath and were registered and given their licenses by the PRC. The following day, six (6) Fatima examinees filed a petition for certiorari with preliminary injunction to compel PRC to allow them to take the physician’s oath. The case was docketed as Special Civil Action No. 93-66530 before the Regional Trial Court of Manila attaching thereto as Annex C the list of examinees provided by the PRC Chief of the Registration Division per Order of Mendieta. The actuation of respondent Mendieta in issuing the Memorandum to the Registration Division and securing the Certificate therefrom expedited the delivery to the examinees’ counsel documentary evidence against the PRC and the Board when the counsel of said examinees could have by himself obtained the certification. In exchange for the alleged implicit collaboration and understanding between Fatima examinees and respondent, the latter was not impleaded in the suits (civil and criminal) subsequently filed by the examinees against PRC and the Board (OMB-ADM-0-93-0434 and Special Civil Action No. 93-6653)) despite the concurrence of Mendieta to the Board’s Resolution dated June 7, 1993.”

For his part, respondent Mendieta countered, that,



"(1) The certification issued by the PRC Chief of Registration Division is a public document access to which is guaranteed by the Constitution itself;

(2) The certification was not used for an illegal purpose;

(3) The complainant's allegation that his suggestion to further investigate the matter and he be allowed to sit in the investigation panel was intended to help Fatima School of Medicine is a malicious lie, for the NBI itself, in a related case, found nothing against him and instead recommended the prosecution of Mr. Pobre; and

(4) The fact that the certification came into the possession of the Fatima examinees is not probative of an illicit collaboration between him and Fatima."

Evaluating the evidence presented, the PCAGC found respondent Mendieta liable for violation of Republic Act 6713, to wit:

"x x x it is not denied by respondent Mendieta that he ordered the preparation of the list of ten (10) successful examinees from the different schools by the PRC Registration Division which document was utilized the following day as an Annex to the petition filed by the Fatima examinees against PRC (without impleading respondent), and the Board of Examineers. Although, the said act by itself cannot be considered illegal, it, however, borders on impropriety on the conduct of a public official.

Strictly speaking, respondent Mendieta's defense is proper to the extent that the List or Certification is a public document access to which is available to any party including himself and the counsel of the examinees, thus, the latter could have by himself secured the Certification. Considering, however, the position of respondent in the PRC who has a moral sway over subordinate officials thereof, and the act of the examinees in attaching the same as an Annex to their petition for preliminary injunction against the PRC itself, it is apparent that respondent unduly cooperated with them in filing the case. This act of respondent vividly portrayed his role as dispenser and peddler of undue patronage, precisely prohibited by R.A. 6713. For this reason, this Commission holds the considered view that this misconduct is a continuation, if not a part and parcel of the manifest partiality earlier shown by respondent in favor of Fatima School."

In sum, the PCAGC found respondent liable for the charges in the first and second administrative complaints and thus recommended respondent Mendieta's dismissal from the service. In the words of the Commission:

"x x x respondent violated Sec. 3, pars. (a) and (e) of the Anti-Graft and Corrupt Practices Act (R.A. 3019) earlier quoted. He also violated Sec. 4, pars. (b) and (c) of the Code of Conduct and Ethical Standards for Public Officials (R.A. 6713), which provides as follows:

(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) Justness and Sincerity. - They shall at all times respect the rights of othes, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. x x x

Sec. 11. par. (a) thereof further provides that:

"A violation thereof shall be punished with a fine not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency."

and the same Sec. 11. par (b) thereof provides:

"Any violation thereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him."

As can be seen above, the proper penalty for herein respondent is removal from Office.

WHEREFORE, in view of the foregoing, the Commission hereby resolved and so recommends to the Office of the President, that respondent Mariano Mendieta, Associate Commissioner,



Professional Regulations Commission, be **DISMISSED** from the service.

SO RESOLVED.

After evaluating the evidence on record, this Office concurs with the findings of the Commission and so adopts its recommendation for the dismissal of respondent Mendieta with the additional penalty of forfeiture of all benefits under the law.

WHEREFORE, as recommended by the Presidential Commission Against Graft and Corruption, respondent Associate Commissioner Mariano A. Mendieta of the Professional Regulation Commission is hereby **DISMISSED** from the service with forfeiture of all benefits under the law for violation of Section 3 (a) and (e) of Republic Act 3019 and Section 4 (b) and (c) of Republic Act 6713.

Let the Office of the Ombudsman be furnished a copy of this Administrative Order for the investigation of the criminal aspect of this case.

SO RESOLVED.

DONE in the City of Manila, this 29th day of November in the year of Our Lord, Nineteen Hundred and Ninety-Five.



By the President:



RUBEN D. TORRES
Executive Secretary

FBC/amc
