Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the matter of:
BACOOR DOCTORS MEDICAL CENTER, INC.

SEC CDO Case No. 05-15-019

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

This resolves the *Motion for Reconsideration of the Cease and Desist Order dated 09 June 2015*[1], (treated herein as a "**Motion to Lift**") filed by the BACOOR DOCTORS MEDICAL CENTER, INC. (*for brevity* "**Respondent**") praying that the Commission lift its *Cease and Desist Order* (**Assailed CDO**), the dispositive portion read as follows:

> "WHEREFORE, premises considered and pursuant to the authority vested in the Commission, Respondent BACOOR DOCTORS MEDICAL CENTER, INC. is engaged in the unauthorized offer for sale of securities, the respondent corporation, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST, UNDER PAIN OF CONTEMPT, from offering for sale or selling securities in the form of its shares of stocks** until the requisite registration statement is duly filed with and approved by the Commission and until they have complied with all the requirements of law and its implementing rules and regulations."

The facts of the case are as follows:

Respondent is a domestic stock corporation registered with the Commission on 14 December 2010 under Company Registration No. CS201019842. Its purpose is to establish, own, manage and maintain hospitals, medical and clinical laboratories. Its principal office address is at Molino Boulevard, Bayanan, Bacoor, Cavite.

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[1] Dated 22 June 2015.

On 17 June 2015, Respondent received a copy of the Commission's Assailed CDO[2]. On 22 June 2015, it filed a *Motion to Lift* alleging among others, the following:

1. That Respondent never authorized any person to sell any of its shares of stocks or make any offering. The alleged offering made at a public online chat room (http://pinoy.md) was due to the identity theft of Dr. Jerry Castro[3];
2. That all of its twenty-five (25) stockholders have fully subscribed and paid all of its shares, hence has no more shares to sell[4];
3. That it has a separate and distinct legal personality from its stockholders and other corporations, hence the CDOs issued against Diliman Doctors Hospital Inc. and Pacific Global Medical Center Inc. should not in any manner affect the instant case[5];
4. That Respondent suffered and is continuously suffering irreparable damage by the issuance of the Assailed CDO, which have no evidentiary and legal basis, thus warrants the immediate lifting thereof. Respondent claims that its loan from Land Bank of the Philippines (LBP) amounting One Hundred Million Pesos (Php 100, 000,000.00) to construct its building and purchase the necessary equipment may be affected because of the Assailed CDO.[6];

During the hearing on Respondent's *Motion to Lift* on 07 July 2015, Respondent reiterated the grounds alleged in its *Motion to Lift* that: 1.) The Respondent's authorized capital stock is already fully subscribed from 2013-2014; 2.) There was an identity theft of Dr. Jerry Castro's online account and someone impersonated him to post the advertisement in an online forum (http://pinoymd.com); 3.) Rebekah Latupan is an employee/secretary of Respondent but she resigned last April 2015[7].

In response to Respondent's claim, EIPD commented that: 1.) there is sufficient evidence to prove that Respondent is offering its shares of stocks to the public since the selling or offering was done in Respondent's premises and all its employees/staff are aware of it; 2.) The investigating team was able to talk to Dr. Jerry Castro, through phone, and the latter referred the team to Rebekah Latupan; 3.) the investigating team was able to personally talk to Ms. Latupan at Respondent's premises[8].

During the said hearing, the Commission directed Respondent to submit a copy of its Stock and Transfer Book (STB). On 09 July 2015, Respondent filed a *Manifestation*[9], attaching therein an uncertified photocopy of its STB.

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[2] Paragraph 1 of the Motion to Lift.
[3] Pages 2-5 of the Motion to Lift.
[4] Ibid.
[5] Page 6 of the Motion to Lift.
[6] Page 7 of the Motion to Lift.
[7] Order dated 20 July 2015.
[8] Ibid.
[9] Dated 08 July 2015.

On 23 July 2015, EIPD filed its *Comment/Opposition*[10] to Respondent's *Motion to Lift*, alleging, among others, the following:

1. That there is sufficient evidence to prove that Respondent is engaged in offering and/or selling of shares of stocks to the public without the necessary license from the Commission which violates Section 8.1[11] of the Securities Regulation Code (SRC)[12];
2. That the **EIPD team was able to talk to Dr. Jerry Castro, through mobile phone, as posted in an online advertisement**. Dr. Castro's identity was further confirmed when the EIPD Team was able to talked to Ms. Rebekah Latupan (Respondent's staff) who acknowledge the same. The alleged hacking incidents against Dr. Castro is self-serving and irrelevant[13];
3. That Respondent is offering and selling its shares of stocks within its premises. **The EIPD team was able to secure a copy of a "Stockholders General Policy Form" from Ms. Rebekah Latupan, an employee of Respondent[14], at Respondent's office**;
4. That Respondent's claim that it has no more shares to sell has no merit because the online offering was posted on 07 August 2011 while the alleged full subscription of Respondent's authorized capital stock occurred in 2013[15];
5. That Respondent is owned by a close-knit group (25 individuals) owning equal amount of shares. Thus, it is impossible for the Respondent not to know that its stockholders are offering its shares[16]. Moreover, it is stated in Respondent's AOI that no shares of its stocks shall be disposed to the public unless it is offered in the following order of priority: a.) to the corporation; b.) to the holder of founder's share, c.) to the holder of common share; and d.) to the public[17];
6. That Respondent is prohibited by law to offer or sell its shares to the public without the necessary license from the Commission. This also applies to Respondent's officers, directors and stockholders. The offering or selling of Respondent's shares by its stockholders is a scheme to circumvent the legal prohibition on the offering or sale of securities to the public. What cannot be done directly, should not be done indirectly[18].

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[10] Dated 21 July 2015.

[11] Section 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

[12] Paragraph 7 of EIPD's Comment/Opposition.

[13] Paragraph 8 of EIPD's Comment/Opposition.

[14] Paragraph 9 of EIPD's Comment/Opposition.

[15] Paragraph 12 of EIPD's Comment/Opposition.

[16] Paragraphs 13-14 of EIPD's Comment/Opposition.

[17] Paragraph 16 of EIPD's Comment/Opposition.

[18] Paragraph 17 of EIPD's Comment/Opposition.

On 06 August 2015, Respondent filed its *Reply*[19], to EIPD *Comment/Opposition*, alleging, among others, the following:

1. That a certain Rodel Tolentino did not testify to support the alleged sale of shares of stock between him and Respondent, thus it is a mere hearsay. Similarly, the alleged knowledge among the employees and staff of Respondent that its shares of stocks are being offered and sold indiscriminately are also hearsay[20];
2. That Respondent's authorized capital stock has been fully subscribed and paid by its 25 stockholders. The shares of stock issued to the 25 stockholders are therefore their personal property, hence they have every right to dispose of the same[21];
3. That Dr. Jerry Castro is a victim of computer-related identity theft and he did not offer to sell Respondent shares of stock in an online forum (http://pinoy.md)[22] .

On 29 September 2015, another hearing was conducted to compare Respondent's submitted photocopy STB with its original. During the hearing, Respondent presented its original STB for examination and comparison. Upon motion and despite Respondent's objection, EIPD was given ten (10) days to file its *Comment*. Thereafter, Respondent was given the same period from receipt of EIPD's *Comment* to file its *Reply*, if any[23].

On 09 October 2015, EIPD filed its *Comment*[24] alleging, among others, the following:

1. That the entries in Respondent' STB do not indicate the actual date of acquisition and transfer of its shares of stock. Thus, the STB is insufficient to prove the alleged transfer of Respondent's shares to its stockholders[25];
2. That it transferred all of its shares in 2014 is irrelevant and immaterial because the online public offering of Respondent's shares was made online in 2011. This online offering/selling of Respondent shares was validated by EIPD investigators when they were offered to buy Respondent's shares by its administration staff at the latter's hospital on 21 April 2015[26]. Thus, Respondent is illegally offering for sale such shares of stocks in excess or over its authorized capital stock;
3. That it is unusual and strange that all of Respondent's stockholders would subscribe and pay a large volume of shares and subsequently sell either all or substantial part to the public within a short span of time. This unusual circumstance would lead to the conclusion that

[19] Dated 05 August 2015.
[20] Pages 1-3 of Respondent's Reply.
[21] Pages 3-5 of Respondent's Reply.
[22] Pages 5-8 of Respondent's Reply.
[23] Order dated 29 September 2015.
[24] Dated 06 October 2015.
[25] Paragraph 3 of EIPD's Comment.
[26] Paragraph 4-9 of EIPD's Comment.

Respondent's stockholders are merely used as agents and salesmen to sell its shares to the public[27].

On 26 October 2015, Respondent filed a *Reply*[28] in response to EIPD's *Comment* dated 06 October 2015, alleging, among others, the following:

1. That the 80,000 authorized capital stock of Respondent were all fully subscribed and paid by its 25 stockholders. On 16 December 2011, Respondent issued 20,000 shares to its stockholders. On 18 June 2013, it issued 42,500 shares to its stockholders. On 14 November 2014, it issued 17,500 shares to its stockholders[29];
2. That since Respondent shares were subscribed and paid by its shareholders, it has no shares to sell to the public. Thus, the rule that a corporation cannot offer or sell its own shares to the public without a registration statement duly filed and approved by the Commission does not apply[30];
3. That due to the large amount of capital needed to establish and operate a hospital, it is not unusual for Respondent's stockholders to fully subscribe and pay its authorized capital[31];
4. That since Section 63 of the Corporation Code (Code) recognizes the right of a stockholder to transfer his/her shares, the principle of "what cannot be done directly, should not be done indirectly" does not apply[32];

With the submission of Respondent's *Reply*, with no remaining issues to be clarified, the hearing on the *Motion to Lift* is terminated and submitted for resolution.

The issues raised can be summarized as "Whether or not Respondent presented sufficient grounds to overcome the findings in the Commission's *Cease and Desist Order* dated 09 June 2015".

We find the instant *Motion to Lift* bereft of merit.

Section 8.1 of the SRC provides that **securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission**. In connection therewith, Section 12.1 of the SRC states that all securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

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[27] Paragraph 11-12 of EIPD's Comment.
[28] Dated 23 October 2015.
[29] Pages 2-3 of Respondent's Reply dated 23 October 2015.
[30] Pages 3-4 of Respondent's Reply dated 23 October 2015.
[31] Pages 4-5 of Respondent's Reply dated 23 October 2015.
[32] Pages 5-8 of Respondent's Reply dated 23 October 2015.

Section 3 of the SRC defines securities as: ""**Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character**. It includes: (a) **Shares of stocks**, bonds, debentures, notes evidences of indebtedness, asset-backed securities; x x x"

Rule 3, paragraph 1, sub-paragraph N of the SRC provides that:

> **"Public offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited**. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:
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> i. Publication in a newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
> ii. Presentation in any public or commercial place;
> iii. **Advertisement or announcement** in any radio or television, or **any online or e-mail system**; or
> iv. **Distribution and/or making available flyers, brochures or any offering material** in a public or commercial space, or mailing the same to prospective purchasers."

Relative thereto, Section 64 of the SRC also provides that the Commission, after proper investigation or verification, may issue a Cease and Desist Order if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public[33].

The CDO was issued on the basis of the foregoing legal provisions. To prove the elements of the CDO, EIPD presented an advertisement of offering/selling of Respondent's shares posted on 07 August 2011 in an online forum (http://pinoy.md). Moreover, it was shown that EIPD investigators, using the phone number posted in the said online advertisement, was able to talk to Dr. Castro. It was Dr. Castro who indorsed the EIPD investigators to Ms. Rebekah Latupan, who according to Dr. Castro is a hospital staff. Following Dr. Castro's indorsement, EIPD conducted a field investigation at the premises of Respondent's hospital. They were introduced to Ms. Latupan, who already expected the investigating team as advised by Dr. Castro. Thereafter, Ms. Latupan explained and discussed to the EIPD investigators the details in buying Respondent shares. Ms. Latupan gave the investigators a "Stockholders General Policy" which illustrated the requirements and benefits for medical and non-medical stockholders.

To establish its right to lift the CDO, Respondent claims that http://pinoy.md is a public online chat room where any person can post a statement of whatever nature. It further stated that the offering made by a certain Dr. Jerry Castro was not authorized by Respondent. Then, Respondent argues that Dr. Jerry F. Castro, an

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[33] Section 64.1 of the SRC.

incorporator, was a victim of computer-related identity theft. In support of this contention, he presents the following evidence: 1.) Letter dated 04 September 2013 from Land Transportation Office (LTO)[34]; 2.) Letter dated 01 June 2015 from Philippine National Bank (PNB)[35]; 3.) Undated Letter of Dr. Castro to the National Bureau of Investigation (NBI)[36]; 4.) Certification dated 29 June 2015 from NBI[37]. Thus, Respondent posits that Dr. Castro was not the one who made the online advertisement regarding the sale of its shares.

Examining Respondent's arguments and evidence, it is evident that the alleged computer-identity theft of Dr. Castro occurred sometime in 2013. However, the online advertisement was posted way back 07 August 2011. Thus, Respondent's allegation and argument would be irrelevant to the issue of public offering because the online offering happened prior to Dr. Castro's alleged computer-identity theft.

Moreover, after the alleged identity theft occurred, EIPD investigators were able to talk to Dr. Castro in 2015 who indorsed the same to Ms. Latupan. This circumstance showed that it was Dr. Castro himself who facilitated the offering of Respondent's shares to the EIPD investigators. Thus, Respondent's argument could not be given any credence.

Respondent further claims and argues that its shares have been fully subscribed and paid by its own stockholders on the following dates: 1.) 20,000 shares issued on 16 December 2011; 2.) 42,500 shares issued on 18 June 2013; 3.) 17,500 shares issued on 14 November 2014. In support of its claim, Respondent presented its stock and transfer book and the stock certificates. However, when the online advertisement of offering/selling of Respondent shares was posted on 07 August 2011 the shares were not yet fully subscribed based on the STB it presented. Thus, it is indicative of was offering/selling of Respondent shares to the public prior to its full subscription.

Assuming *arguendo* that all Respondent's shares were fully subscribed and paid up by its stockholders in 2014, it still does not overcome the fact, as established by the Commission's own EIPD investigators, that Respondent is offering its shares to the public in 2015 without the necessary license from the Commission. Arguing that it has no unissued shares to offer/sell does not rebut the findings that there is indeed offering/selling of it shares to the public. EIPD's verified statements of its investigators and documentary evidence illustrates the presence of offering/selling of Respondent shares to the public. Otherwise stated, even if Respondent shares are fully subscribed by its stockholders, it is still offering/selling its shares in excess or over its authorized capital stock. This is another reason for making the CDO permanent as it is a likely cause fraud on investors.

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[34] Annex 7 of the Motion to Lift.
[35] Annex 8 of the Motion to Lift.
[36] Annex 9 of the Motion to Lift.
[37] Annex 2 of Respondent's Reply dated 23 October 2015.

Respondent finally argues that if there is offering or selling of its shares, it is the stockholders, as owners, who are offering or selling it to the public. Since Respondent has a personality separate and distinct from its stockholders, it is not the one offering or selling its shares to the public.

To reiterate, EIPD presented proof that the offering/selling of Respondent shares were done inside its premises by its hospital staff. EIPD investigators personally met and talked to Ms. Latupan, as indorsed by Dr. Castro, regarding the details in buying of Respondent shares. Ms. Latupan provided EIPD investigators of a copy of the Respondent's "Stockholders General Policy Form[38]" which elaborate on the details in buying of Respondent shares. Moreover, Respondent admitted during a hearing on 07 July 2015 that Ms. Latupan used to be its employee at the time when EIPD conducted field investigation.

Assuming *arguendo* that Respondent's stockholders are the ones offering/selling their shares to the public, uncontroverted evidence show that Respondent is still facilitating or allowing such offering/selling of its stockholders' shares to the public in its premises.

As a rule, mere denial cannot prevail over the positive testimony of a witness; it is self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail[39].

While, the Commission is cognizant of Respondent's efforts in assisting the government in its mission to address the problem of inadequacy of hospital facilities in distant areas by establishing a hospital in Bacoor, it is mandated by the law however to ensure full and fair disclosure on securities sold to the public to insulate it against fraud. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system[40]. Thus, It is declared in Section 2 of the SRC, that:

> "Section 2. Declaration of State Policy. – The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, **ensure full and fair disclosure about securities,** minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market. To achieve these ends, this Securities Regulation Code is hereby enacted."

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[38] Annex "H" of EIPD's Motion for Issuance of CDO dated 19 May 2015.
[39] People v. Dumlao, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 769.
[40] Power Homes Unlimited Corporation vs. Securities and Exchange Commission and Manero, G.R. No. 164182, February 26, 2008.

All told, Respondent presented a weak and self-serving defense. It failed to overcome EIPD's findings, which is supported by solid and factual evidence, that Respondent is indeed selling/offering securities to the public in the form of its shares without the necessary license from the Commission.

WHEREFORE, premises considered, the *Motion for Reconsideration of the Cease and Desist Order dated 09 June 2015*, treated as a Motion to Lift CDO, filed by BACOOR DOCTORS MEDICAL CENTER, INC. is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER issued against the subject corporation, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under its authority, is hereby **MADE PERMANENT**.

The Enforcement and Investor Protection Department is hereby **DIRECTED** to: (a) serve this *Resolution* to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of BACOOR DOCTORS MEDICAL CENTER, INC., (b) post copies of the *Resolution* at the entrance of the main office and/or branches, if any, of BACOOR DOCTORS MEDICAL CENTER, INC., and to investigate further the incorporators of BACOOR DOCTORS MEDICAL CENTER, INC. who may have effected similar investment schemes with other hospitals.

Let a copy of this *Resolution* be also posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

EIPD, in coordination with other concerned departments, is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN TEN (10) DAYS from receipt of this *Resolution*.

SO ORDERED.

Mandaluyong City; 12 January 2016.

TERESITA J. HERBOSA *
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

* On Official Business