

Advisory Opinion No. 92-30

The Law Department of the City of New York (the "Law Department") has requested an opinion as to whether, consistent with Chapter 68 of the City Charter, Dr. Luis Marcos, the Mayor's candidate for Commissioner of Mental Health, Retardation and Alcoholism Services ("Mental Health"), could receive compensation from teaching at the New York University School of Medicine ("NYU"), where he is a tenured professor of psychiatry, and also maintain a small private practice in psychiatry. In addition, the Law Department has requested an opinion as to whether it would be a conflict of interest if Dr. Marcos' wife, also a psychiatrist, treats in-patients at Columbia Presbyterian Hospital, which has a current contract with Mental Health for the provision of out-patient services to patients suffering from mental illness.

For the reasons set forth below, it is the opinion of the Board that it would not be a violation of Chapter 68 of the Charter for Dr. Marcos to receive compensation for teaching at NYU, and to maintain such

private practice. In addition, it is the opinion of the Board that it would not be a violation of Chapter 68 of the Charter for Dr. Marcos' wife to treat in-patients at Columbia Presbyterian Hospital.

#### Teaching Position

Dr. Marcos is a tenured professor of psychiatry at the NYU School of Medicine, where he previously taught courses on administrative psychiatry. NYU, which has business dealings with the City, is prepared to offer Dr. Marcos a compensation package for limited teaching, including a possible tuition benefit for Dr. Marcos' family which would be granted solely in compliance with NYU's existing standards regarding tuition benefits for families of faculty members. Dr. Marcos' teaching duties would involve some supervision of residents studying public health administration and service delivery, as well as lecturing. NYU does not have any direct contracts with Mental Health but has affiliation contracts with the Health and Hospitals Corporation ("HHC") on whose board Dr. Marcos would sit ex officio as Commissioner of Mental Health. Dr. Marcos has agreed to recuse himself from consideration of any HHC/NYU affiliation contract matters.

#### Psychiatric Practice

Dr. Marcos currently maintains a small private

psychiatric practice. As a matter of maintaining his professional skills as a psychiatrist, Dr. Marcos proposes to continue this private practice, devoting no more than seven hours per week, during evenings and weekends, in which he would see private patients. None of the patients would be referred by HHC or Mental Health.

Dr. Marcos' Spouse

Dr. Marcos is married to a psychiatrist, who is employed full-time in the Department of Psychiatry at the Columbia Presbyterian Hospital, treating patients with mental illness and substance abuse problems on an in-patient basis. Columbia Presbyterian Hospital has a current contract with Mental Health for the provision of out-patient services to patients suffering from mental illness. However, Dr. Marcos' spouse does not receive her salary through this contract. Dr. Marcos has also agreed to recuse himself from consideration of any matters related to this contract.

Applicable Law

Charter Section 2604(a)(1)(b) prohibits a public servant who is a regular employee from having an interest in a firm which such public servant knows or should have known is engaged in business dealings with the City. An "interest" in a firm includes a position

with such firm. See Charter Section 2601(18).

Charter Section 2604(e) provides that a public servant may hold a position otherwise proscribed under Section 2604(a)(1)(b) if the Board determines, after receiving the written approval of the public servant's agency head, that such position does not involve a conflict with the purposes and interests of the City.

By letter to the Board, Mayor David N. Dinkins has approved Dr. Marcos' proposed teaching position and private practice, pursuant to Charter Section 2604(e).

Based on the description of the teaching position, and on the Mayor's written approval, the Board has determined that Dr. Marcos' teaching at NYU under the circumstances described above is not in conflict with the purposes and interests of the City. Dr. Marcos may therefore accept compensation for such teaching duties without violating Chapter 68 of the Charter. See Advisory Opinion No. 90-2, in which the Board determined that Dr. Billy Jones, a previous Commissioner of Mental Health, could accept compensation for limited teaching duties at the CUNY Medical School, in circumstances directly analogous to those presented in this case.

The Board has also determined that Dr. Marcos' limited psychiatric practice does not conflict with his

official duties and does not violate Chapter 68 of the Charter, as long as it is performed at times when he is not required to perform services for the City; he does not use his position with the City to obtain any private advantage; and he does not disclose any confidential information concerning the City. See Charter Sections 2604(b)(2), (b)(3) and (b)(4).

Finally, the Board has determined that there is no conflict of interest created by Dr. Marcos' wife treating in-patients at Columbia Presbyterian Hospital, which has a contract with Mental Health, inasmuch as Dr. Marcos is not in a position to affect his spouse's compensation, terms of employment, or otherwise alter the contract with his spouse's hospital to benefit his spouse. The Board's determination is conditioned on Dr. Marcos recusing himself from consideration of any matter relating to the current contract between Mental Health and the Hospital for the provision of out-patient services, and any matter relating to any other contract between Mental Health and the Hospital for the provision of either in-patient or out-patient services to patients suffering from mental illness. See Charter Section 2604(b)(3) and Advisory Opinion No. 91-15, in which the Board held that it would not be a conflict of interest for a public servant to be involved on behalf

of her agency in collaborating with the City's educational institutions in developing programs for City employees, including the institution employing her spouse, who would have oversight responsibility with respect to such a program. The Board conditioned its opinion on the public servant's playing no role in determining whether or not her agency should enter into any contracts with her spouse's institution, nor being involved in negotiating the terms of any such contracts. Similarly, in this case, the Board's determination with respect to Dr. Marcos' spouse is conditioned on his recusal from consideration of certain matters, as noted above. Recusal means that Dr. Marcos may not approve, or otherwise be involved with, any such matters, including but not limited to participating in discussions concerning such matters, or attending meetings with City officials or others and receiving documents with respect to such matters.

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: November 16, 1992