

MEDICAL LABORATORY TECHNOLOGISTS BOARD

醫務化驗師管理委員會

DISCIPLINARY INQUIRY

SUPPLEMENTARY MEDICAL PROFESSIONS ORDINANCE (CAP. 359)

Date of inquiry : 24 June and 9 July 2021

Name of the respondent : Ms LO Ching-yee (Part I registered MLT)
(Registration No.: MT101528)

Charge against the respondent

The charge as extracted from the Notice of Inquiry sent to the respondent on 23 July 2020 is as follows –

“That you, being a registered Part I medical laboratory technologist (“MLT”) and the professionally qualified director of Y (a laboratory) (“the Laboratory”), on or around 1 November 2017, failed to ensure the Laboratory was run ethically and professionally in that –

- (a) the Laboratory advertised with details other than the name of the registered MLTs, business and telephone number, company name under which the MLTs carry on their business, qualifications approved by the Board in their Chinese and English forms, service available, charges, turnaround time and announcement on commencement or removal of practice; and/ or
- (b) the Laboratory offered to give rebates to medical practitioners;

and that in relation to the facts alleged, either individually or cumulatively, you have been guilty of unprofessional conduct.”

Decision of the Board

1. In the hearings on 24 June and 9 July 2021, the respondent is represented by counsel and the Secretary is represented by a Legal Officer.

Objection on point of law

2. Counsel for the respondent objects to the charge on a point of law. In essence, the grounds of objection are:

- (1) the word “advertise” in the Code of Practice (“the Code”) means publicizing something to the general public and issuing a letter to a doctor could not constitute an act of “advertising”;
- (2) while section F(h) in Part II of the Code prohibits the actual giving of rebates, the Code does not prohibit offering to give rebates; and
- (3) if and insofar as the present charge is not confined to sections F(f) and (h) in Part II of the Code, the present inquiry is unfair and unconstitutional because the respondent is charged with an offence which is not specified in the Code and is not properly informed of the allegations against her.

3. In relation to ground (1), the Board does not accept that the word “advertise” must mean publicizing something to the general public and that issuing a letter to a particular person could never constitute an act of “advertising”.

4. As regards grounds (2) and (3), the Board notes that the Code does not provide an exhaustive list of unprofessional conduct. It is expressly provided in paragraph 6 in Part I of the Code and section 26(3) of the Supplementary Medical Professions Ordinance, Cap. 359 that:-

“the fact that any matters are not mentioned in a Code of Practice, shall not preclude the board from judging a person to be guilty of unprofessional conduct by reference to those matters.”

5. Section B of the Code elaborates on the meaning of unprofessional conduct as follows:

“A medical laboratory technologist is guilty of ‘unprofessional conduct’ when he, in the pursuit of his profession, does something or omits to do something, which in the opinion of his professional colleagues of good repute and competency, might be reasonably regarded as disgraceful or dishonourable or which falls below the standard of competency that his colleagues might regard as reasonable.”

6. The Board is of the view that while the Code does not expressly prohibit offering to give rebates (as opposed to actual giving of rebates), it is open to the Board to find in an appropriate case that offering to give rebates constitutes an unprofessional conduct.

7. As regards counsel for the respondent's challenge that the present inquiry is unfair and unconstitutional, the Board notes that paragraph 2 of the Notice of Inquiry has set out the particulars of the alleged unprofessional conduct. The respondent has been properly informed of the allegations against her. The Board cannot see how the present inquiry can be said to be unfair and unconstitutional.

8. Accordingly, the Board rejects the respondent's objection to the charge on point of law.

No case to answer and the charge

9. At the close of the Secretary's case against the respondent, counsel for the respondent made a submission on no case to answer. He indicated that as he would not call any witness, the submission on no case to answer would also serve as his closing submission.

10. Having considered the case against the respondent presented by the Legal Officer and the evidence adduced by him, and having heard the submissions of both parties, the Board rejects the submission of no case to answer and makes the following decision.

11. It is not disputed that at all material times, the respondent was a registered Part I medical laboratory technologist ("MLT") and the professionally qualified director of the Laboratory. In essence, it is the Secretary's case that the respondent, being the professionally qualified director of the Laboratory, failed to ensure the Laboratory was run ethically and professionally in that the Laboratory, by its two letters dated 1 November 2017 addressed to two doctors, -

- (a) advertised with details other than those a MLT is permitted to advertise under section F(f) in Part II of the Code of Practice ("unpermitted details"); and/or
- (b) offered to give rebates to medical practitioners.

12. Section F(f) in Part II of the Code of Practice provides, insofar as is relevant, as follows: -

“No [registered MLT] should ... advertise with details other than the name of the registered medical laboratory technologist, his/her business and telephone number, company name under which the medical laboratory technologist carries on his/her business, qualifications approved by the Board in their Chinese and English forms, service available, charges, turnaround time and announcement on commencement or removal of practice”

13. The Legal Officer adduced, among other things, copies of two letters dated 1 November 2017 (“the Two Letters”) as evidence. The Two Letters were identical except, primarily, that one of them was stated to be addressed to “Dr. A” (a medical practitioner) whereas the name of the recipient on the other letter was blackened. The Two Letters were purportedly issued by the Laboratory (of which the respondent is the professionally qualified director) on its letterhead. A logo bearing the words “YY” (the Laboratory name in abbreviation) is shown at the top left corner of the Two Letters. The subject of the Two Letters was “iPhone X Reward Programme – Nov 2017 to Mar 2018”. The body of the Two Letters read: -

“Thank you for your continued support of YY! We would like to express our gratitude by introducing the iPhone X Reward Programme from **Nov 2017 to Mar 2018**. An iPhone X will be rewarded to you for every \$30000 above the baseline*, or 20% Credit amount!

...

* This offer cannot be exchanged for cash or cash vouchers and is non-refundable.

...”

14. Two examples are given in the middle of the Two Letters showing how the rewards are calculated. The examples refer to a “Baseline” and the “Sales” of each month from November 2017 to March 2018. Example 1 illustrates a situation where the “[t]otal sales of 5 months” amount to \$46000 and the baseline is set at \$10000. The example states that the offeree will “[w]in an iPhone X for the first \$30000 above the baseline from May 2018 onwards” and “[e]njoy 20% credit amount for the remaining \$6000 above the baseline in April”. Example 2 illustrates a situation where the “[t]otal sales of 5 months” amount to \$29000 and the baseline is also set at \$10000. The example then states that the offeree will “[e]njoy 20% credit amount for the \$19000 above the baseline in April” and “[e]arn \$3,800 credit”. In the letter to Dr. A, \$6000 is specified as the

“baseline” under his name at the top left corner whereas in the other letter, that field is blackened together with the name of the recipient. The Two Letters end with “Should you have any inquiry, welcome to contact us at 25xxxx18, or call marketing representatives”.

15. The Legal Officer called Ms C (a witness) as his only witness. Ms C is employed by CC (another laboratory) as Chief Operating Officer and Laboratory Director. She gave evidence that in 2017, the salespersons of CC reported the following to her: -

- (1) When they were introducing their services to their clients, some doctors asked them whether they would offer rebates or other rewards, as offered by other companies.
- (2) At least two doctors showed promotion leaflets of other companies to them. Dr. A and Dr. B (another medical practitioner) were among these doctors.
- (3) Both Dr. A and Dr. B gave a copy of a promotion leaflet to them. In the copy given by Dr. B, his name was blackened because he did not want to be identified.

16. It was Ms C’s evidence that after reading the copies of the promotion leaflets provided by Dr. A and Dr. B, she considered that there might be a contravention of the Code of Practice (“the Code”) and so she referred the matter to ABC (“a professionally association”). Subsequently, ABC, through it solicitors, filed a complaint to the Board against the Laboratory, which leads to the present inquiry.

17. Ms C confirmed in her evidence that the Two Letters adduced by the Legal Officer are the copies of the promotion leaflets obtained from Dr. A and Dr. B. Under cross-examination, she gave evidence that she did not have any direct communication with Dr. A and Dr. B, and that CC’s salespersons did not witness how Dr. A and Dr. B obtained the promotion leaflets. She went on to testify that she was informed by CC’s salespersons that the Laboratory’s salespersons personally gave the promotion leaflets to the two doctors.

18. Counsel for the respondent challenged that Ms C’s evidence is “unreliable hearsay evidence and should not be considered by the Board” (see paragraph 9.4 of his written submission). The Board is aware that Ms C’s evidence contains hearsay. However, the Board also notes that the respondent did not testify nor did she call any witnesses. There is plainly no evidence before the Board to contradict Ms C’s evidence. The Board does

not agree with counsel for the respondent that Ms C's evidence is so unreliable that it should be excluded.

19. The Board also notes that Ms C has not attempted to avoid any questions put to her under cross-examination and has openly admitted what she or CC's salespersons did not witness or hear personally. Ms C impressed the Board as a truthful and reliable witness.

20. Counsel for the respondent argued that the issuing of the Two Letters does not constitute advertising as they have not been publicized to the general public. The Board does not accept that the word "advertise" must mean publicizing something to the general public. Based on the content of the Two Letters, the Board takes the view that they seek to promote business by offering rewards to referring doctors and as such, the issuing of the Two Letters should constitute advertising notwithstanding that they are issued to only two doctors and not the general public.

21. Counsel for the respondent challenged that there is no evidence as to whether there had been any previous transaction between the Laboratory and the recipients of the Two Letters and that the purported rewards in the Two Letters do not amount to "rebates". Having considered the evidence before it, the Board takes the view that it is clear from the Two Letters that the Laboratory is offering to give an iPhone X or a credit amount to referring doctors as rewards for referrals. The Board opines that these rewards constitute "rebates" in the circumstances and should be prohibited.

22. Having considered all the evidence, the Board makes the following findings of facts: -

- (1) On or about 1 November 2017, the Laboratory issued the Two Letters to Dr. A and Dr. B respectively.
- (2) The Letters were personally delivered to Dr. A and Dr. B by the Laboratory's salespersons.
- (3) By the Two Letters, the Laboratory advertised with unpermitted details and offered to give rebates to medical practitioners.

23. Being the professionally qualified director of the Laboratory, the respondent is under a duty to ensure the Laboratory was run ethically and professionally. On the basis

of the findings of facts above, the Board opines that the Laboratory was not run ethically and professionally at the material time and finds the respondent guilty of unprofessional conduct.

24. In passing, counsel for the respondent challenged that a prohibition on issuing the Two Letters as advertisement would be unconstitutional and infringe the freedom of expression. The Board must emphasize that the Code does allow a MLT to advertise with details such as the services he provided and the charges for such services. In cases where unpermitted details are advertised, the Board would consider on a case-by-case basis what has in fact been advertised and decide whether there is any unprofessional conduct. In the present case, the Two Letters contain an offer to give rewards, namely iPhone X and credit amount, to referring doctors based on the sales amount. The Board must emphasize that it takes a very serious view of a MLT or a laboratory sharing fees with any other person or institute (unless the person or institute has taken a commensurate part in the medical laboratory service concerned) or offering rewards to referring doctors as a means of promoting sales.

Sentencing

25. It is against public interest for doctors to refer patients to laboratories based on the rebates or rewards offered by the laboratories, as opposed to their performance. The Board reiterates that it takes a very serious view of a MLT offering rewards to referring doctors as a means of promoting sales.

26. Having considered the plea in mitigation and all the relevant circumstances, the Board decides to order the name of the respondent be removed from the register for 1 month. Such order shall be published in the Hong Kong SAR Government Gazette.

27. The Board wishes to take this opportunity to remind all professionally qualified directors of their duty to ensure the laboratories are run ethically and professionally.

Professor LEUNG Suet-yi
Chairman
Medical Laboratory Technologists Board