Integrity in Practice

Series One: Bribery - Offering and acceptance of illegal advantages

A doctor owes an obligation of fidelity to his patients and, at the same time, may have an undivided loyalty to the organisation he/she is working for. The offering and acceptance of illegal advantages in the course of clinical practice can compromise the doctor's professional judgement, erode patients' trust and impair the interest of his employer. It is thus of great importance that doctors should comply with the legal and the conduct requirements governing corruption.

Case Study 1: Corruption in the procurement of medicine

Dr A is a medical consultant of the Medical Unit in a public hospital. His assessment of the effectiveness of medicine will have a strong bearing on the final selection of the drug for use in his department which would also mean major business for the supplier. On one occasion, Dr A attended an annual ball hosted by a pharmaceutical company on behalf of the hospital and came to know its CEO, Terry. They then maintained close ties and Terry spent considerable sums of money entertaining Dr A by way of lunches and dinners. Lately, Terry called Dr A for dinner in a private club where he disclosed that his company had successfully developed a new antibiotic and requested for Dr A's assistance in recommending the drug for use in his hospital. Terry suggested to offer shares of his company, each of a nominal value of US$1, to Dr A if he agreed to help. Dr A found this an attractive offer as he had been giving serious consideration to planning for his retirement due in five years' time.

Analysis

- In this case, Dr A is a public servant. He and Terry would violate Section 4 of the Prevention of Bribery Ordinance (PBO) if Dr A accepted an advantage from Terry in the form of company shares at nominal value for providing assistance in recommending the new drug to his hospital without the permission of the Hospital Authority (HA).

- Dr A might breach Section 15.1 of the Professional Code and Conduct issued by the Medical Council of Hong Kong (MCHK) which advises doctors to avoid accepting any inducement which
may compromise the independent exercise of their professional judgement.

- Generally speaking, entertainment is an accepted form of social behaviour and does not constitute an advantage under the PBO. However, Dr A should avoid accepting frequent and excessive levels of entertainment because his objectivity in dealing with Terry would be affected or perceived by outsiders to be affected in view of their close relationship.

Case study 2: Accepting rebates from diagnostic laboratories

Shortly after starting his private practice, Dr B was approached by Ms WONG, the proprietor of a medical laboratory and X-ray service, who requested for the referral of all his patients to her. Ms WONG suggested that an arrangement could be made for a sum to be offered to Dr B by the laboratory for each patient referred. She emphasised that it was in no way unfair to the patients since they had to do the tests somewhere in any case. She also said that a number of other doctors in the same building had already made such arrangement with her. Prior to the referral of patients to Ms WONG's laboratory, their agreement was brought to light by the nurse of Dr B’s clinic and the case was then reported to the ICAC.

Analysis

- A principal and agent relationship exists between Dr B and his patients. As such, Dr B would breach Section 9 of the PBO by accepting payments from Ms WONG for referring his patients to her laboratory if Dr B did not have the permission of his patients.

- Although Dr B and Ms WONG have not executed the "under-the-table" deal, they would still be liable to prosecution. Under the PBO, both parties can be found guilty of an offence when the agreement on solicitation and acceptance of advantages have been reached even though the purpose of bribery has not been carried out.

- Dr B might also violate Section 14.1 of the Professional Code and Conduct which prohibits doctors from receiving any inducement e.g. rebates from diagnostic laboratories for referring patients.
Tips to handle issues of offering and acceptance of advantages

(a) Understand the law and the professional code of conduct
The best solution is to have full understanding of the PBO* and the conduct requirements on integrity stipulated in the Professional Code and Conduct of the MCHK to avoid accepting advantages that will lead to loss of objectivity and honesty in the course of clinical practice.

(b) Follow the company policy
Whether being employed by the government, the HA or private medical institutions, the doctor should always seek guidance from the organisation concerned in the matter of acceptance of advantages. The government and the HA have respectively formulated rules and regulations on this issue for their staff to follow. As in the private sector, the doctor should clarify with his/her employer whether he/she can accept advantages from patients or business associates in the discharge of his/her official duties.

(c) Avoid the "sweetener"
Many ICAC cases reflect that corruption always begins with a "sweetening up" process instead of a direct bribe at the outset. It usually starts with the offering of entertainment or small gifts which appear not to be related to the recipient's official duties at the time of offer. Hence, the recipient would easily be trapped in an embarrassing or compromising situation when being asked to return a favour later on. Therefore, doctors should avoid accepting benefits or favours from persons with whom they have official dealings if the advantages are:
- unreasonably generous and offered frequently;
- likely to cause embarrassment in the discharge of their duties;
- likely to make them feel obliged to the offerer; and
- likely to bring their organisation into disrepute.

*The PBO is the piece of legislation against corruption in Hong Kong. It, governing both the public and private sectors, sets out the standards of behaviour for agents when they are conducting their principals’ business.

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<th>Spirit</th>
<th>Gist of the Law</th>
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<td>Section 4 Preventing public servants from abusing official authority for private gain and safeguarding the interests of public bodies and community at large</td>
<td>It is an offence for a public servant, in Hong Kong or elsewhere and without permission of the public body, to solicit or accept an advantage in relation to his official duties.</td>
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<td>Section 9</td>
<td>Maintaining fair play in the private sector and upholding market integrity</td>
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<td>• Any person offering such as advantage also commits an offence of corruption.</td>
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<td>• It is an offence for an agent to solicit or accept an advantage when conducting his principal’s affairs or business without the permission of his principal.</td>
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<td>• Any person who offers such an advantage is also guilty of an offence.</td>
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