

## Discipline Hearing Summary

### Mahmood Khan

The CMLTO Discipline Committee held a hearing on December 21, 2017 at Victory Verbatim in Toronto to consider allegations of professional misconduct against member **Mahmood Khan**, whose principal place of practice is LifeLabs in Mississauga.

#### **Allegations**

The allegations against the member, Mahmood Khan (the "Member"), as stated in the Statement of Allegations in the Notice of Hearing are as follows.

#### *The Member*

1. At the material times, Mahmood Khan (the "Member") was a duly registered member of the College of Medical Laboratory Technologists of Ontario (the "College").

#### *Practice Review Assessments*

2. Pursuant to the Health Professions Procedural Code (the "Code"), being Schedule 2 to the Regulated Health Professions Act, 1991, and the General Regulation under the Medical Laboratory Technology Act, 1991, members of the College must comply with the requirements of the College's Quality Assurance ("QA") program.

3. As part of the program, each year the College randomly selects members to undergo a practice review assessment ("PRA"). The PRA is intended to provide an objective audit of a member's practice in relation to the standards of practice of the profession.

#### *The Member's First PRA*

4. By e-mail dated October 22, 2014, the Member was notified by the College that he had been randomly selected to complete an online PRA. The Member was required to complete the PRA by November 21, 2014.

5. The Member did not respond to the e-mail from the College of October 22, 2014 and did not complete the PRA.

6. By e-mail dated January 19, 2015, the Member was sent a "2nd notification" from the College that he had been randomly selected to complete an online PRA. The Member was required to complete the PRA by February 6, 2015.

7. The Member did not respond to the e-mail from the College of January 19, 2015 and did not complete the PRA.

8. By e-mail dated February 12, 2015, the Member was sent a "3rd notification" from the College that he had been randomly selected to complete an online PRA. The Member was required to complete the PRA by February 27, 2015.
9. The Member did not respond to the e-mail from the College of February 12, 2015 and did not complete the PRA.
10. By e-mail dated March 25, 2015, the Member was notified by the College that the new deadline for completing the PRA was April 8, 2015.
11. On or about March 27, 2015 the Member submitted his PRA.
12. By e-mail dated April 16, 2015, the Member was notified by the College that the results of his PRA were unsatisfactory.

#### *The Member's Second PRA*

13. On or about April 23, 2015, a College staff person called the Member and notified him that he was required to complete a second PRA by May 22, 2015.
14. On or about May 22, 2015, the Member called the College and requested an extension. An extension was granted to May 29, 2015.
15. On or about May 28, 2015, the Member submitted his second PRA.
16. By letter dated August 6, 2015, the Member was notified by the College that the results of his PRA were unsatisfactory. As a result the matter was referred to the Quality Assurance Committee.

#### *Order by the Quality Assurance Committee to Submit Professional Portfolio*

17. On or about August 17, 2015, the Quality Assurance Committee reviewed the Member's PRA results and directed that the Member submit his Professional Portfolio with specific goals pertaining to two particular modules.
18. By letter dated August 20, 2015, the Member was notified by the College of the Quality Assurance Committee's decision and was advised that his Professional Portfolio was required to be submitted to the College by November 2, 2015.
19. The Member did not submit his Professional Portfolio by November 2, 2015.
20. By letter dated November 26, 2015, the College notified the Member that the Quality Assurance Committee granted an extension to January 26, 2016 for the submission of his Professional Portfolio. The Member was reminded that failing to comply with an order of a committee of the College constitutes professional misconduct.

21. By e-mail dated December 17, 2015, the Member indicated to the College that he did not intend to comply with his Quality Assurance obligations.

22. By letter dated January 20, 2016, in response to the Member's e-mail of December 17, 2015, the Member was reminded that he was required to submit his Professional Portfolio by January 26, 2016 and that failing to comply with an order of a committee of the College constitutes professional misconduct.

23. The Member did not submit his Professional Portfolio by the deadline of January 26, 2016.

24. On or about January 27, 2016 the Member called the College and asked about the authority under which the College was acting. The Member further stated that he was retiring in two years and did not understand why he had to complete his Professional Portfolio.

*Referral to the Inquiries, Complaints and Reports Committee*

25. On or about March 11, 2016, the Quality Assurance Committee referred the Member to the Inquiries, Complaints and Reports Committee (the "ICRC") for failing to comply with the Quality Assurance Program.

26. On or about August 25, 2016, September 2, 2016, September 20, 2016 and/or November 8, 2016 the investigator appointed by the College left voicemail messages at the Member's home phone number to which the Member did not respond.

*Failure to Comply with Quality Assurance Committee Order*

27. To date the Member has still not submitted a Professional Portfolio as required by the order of the Quality Assurance Committee of August 17, 2015.

*Professional Misconduct Alleged*

28. It is alleged that the conduct described above constitutes professional misconduct pursuant to:

- a. paragraph 51(1)(b.0.1) of the Code (failing to cooperate with the Quality Assurance Committee); and/or
- b. paragraph 51(1)(c) of the Code (committing an act of professional misconduct as defined in the regulations), more particularly:
  - i. paragraph 1 (contravening by act or omission the Medical Laboratory Technology Act, 1991, the Regulated Health Professions Act, 1991 or a regulation thereunder, more

- particularly subsection 15(3) of Ontario Regulation 207/94) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and/or
- ii. paragraph 19 (failing to reply appropriately to the College) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and/or
  - iii. paragraph 20 (disgraceful, dishonourable or unprofessional conduct) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and/or
  - iv. paragraph 28 (failure to comply with an order of a Committee of the College), of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28.

### **Summary of Evidence**

The Discipline panel was provided with an Agreed Statement of Facts which sets out as follows;

#### *The Member*

1. At the material times, Mahmood Khan (the "Member") was a duly registered member of the College of Medical Laboratory Technologists of Ontario (the "College").

#### *Practice Review Assessments*

2. Pursuant to the Health Professions Procedural Code (the "Code"), being Schedule 2 to the Regulated Health Professions Act, 1991, and the General Regulation under the Medical Laboratory Technology Act, 1991, members of the College must comply with the requirements of the College's Quality Assurance ("QA") program.

3. As part of the program, each year the College randomly selects members to undergo a practice review assessment ("PRA"). The PRA is intended to provide an objective audit of a member's practice in relation to the standards of practice of the profession.

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*Order by the Quality Assurance Committee to Submit Professional Portfolio*

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*Referral to the Inquiries Complaints and Reports Committee*

25. On or about March 11, 2016, the Quality Assurance Committee referred the Member to the Inquiries, Complaints and Reports Committee (the "ICRC") for failing to comply with the Quality Assurance Program.

26. On or about August 25, 2016, September 2, 2016, September 20, 2016 and/or November 8, 2016 the investigator appointed by the College left voicemail messages at the Member's home phone number to which the Member did not respond.

*Failure to Comply with Quality Assurance Committee Order*

27. As indicated above, on August 17, 2015, the Quality Assurance Committee ordered that the Member submit his Professional Portfolio. As of the date of this Agreed Statement of Fact, the Member has still not successfully completed his Professional Portfolio as ordered by the Quality Assurance Committee.

*Admission of Professional Misconduct*

28. It is alleged that the conduct described above constitutes professional misconduct pursuant to:

- a. paragraph 51(1)(b.0.1) of the Code (failing to cooperate with the Quality Assurance Committee); and/or
- b. paragraph 51(1)(c) of the Code (committing an act of professional misconduct as defined in the regulations), more particularly:
  - i. paragraph 1 (contravening by act or omission the Medical Laboratory Technology Act, 1991, the Regulated Health Professions Act, 1991 or a regulation thereunder, more particularly subsection 15(3) of Ontario Regulation 207/94) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and
  - ii. paragraph 19 (failing to reply appropriately to the College) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and
  - iii. paragraph 20 (disgraceful, dishonourable or unprofessional conduct) of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28; and
  - iv. paragraph 28 (failure to comply with an order of a Committee of the College), of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28.

### **Decision and Reasons**

The panel considered the Agreed Statement of Facts and found that the facts supported a finding of professional misconduct. With respect to the allegation in paragraph 28(b)(iii) of the Statement of Allegations that the Member committed an act of professional misconduct as set out in paragraph 20 of section 1 of Ontario Regulation 752/93 under the Medical Laboratory Technology Act, 1991, the Panel finds that the member's conduct would reasonably be regarded by members as unprofessional.

### **Penalty Decision**

The panel was presented with a Joint Submission on Penalty and also heard submissions. The panel accepts the Joint Submission and accordingly makes the following order.

1. Mr. Khan shall appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.

2. The Registrar is directed to suspend immediately Mr. Khan's Certificate of Registration for a minimum period of four (4) weeks, such suspension to continue until Mr. Khan successfully completes and submits, in a form and manner acceptable to the Registrar, his 2014 Professional Portfolio as ordered by the Quality Assurance Committee on August 17, 2015.

3. The Registrar is directed to impose the following specified terms, conditions and limitations on Mr. Khan's certificate of registration:

a. Within four (4) weeks of the date of the Discipline Hearing, Mr. Khan must successfully complete and submit, in a form and manner acceptable to the Registrar, his 2014 Professional Portfolio as ordered by the Quality Assurance Committee on August 17, 2015.

b. Within twelve (12) months of the date of the Discipline Hearing, Mr. Khan must provide proof, acceptable to the Registrar, of successful completion (i.e., an unconditional pass) of the PROBE course, which is to be taken at Mr. Khan's own expense.

c. For a period of two (2) years from the date of the Discipline Hearing, Mr. Khan is required to respond to all correspondence from the College within 30 days from the date of the receipt of the correspondence or within such time as specified in the correspondence.

d. Mr. Khan is required to submit, 12 months, 24 months and 36 months after the date of the Discipline Hearing, to the satisfaction of the Registrar, a comprehensive report consisting of Mr. Khan's most recently completed self-assessment, a career summary and a record of the continuing education and professional activities carried out by Mr. Khan during the preceding 12 month period.

4. Mr. Khan is required to pay to the College costs in the amount of \$500.00 within twelve (12) months of the date of the Discipline Hearing.

#### **Reasons for Penalty Decision**

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate medical laboratory technologists. This objective is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should be respected unless they fall so far outside the range of an appropriate sanction that they would bring the administration of justice at the College into disrepute, or are otherwise contrary to the public interest.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

The Panel is satisfied that the penalty proposed in the Joint Submission will send a clear message to the College's membership generally and to the Member in specifically that this conduct is not acceptable. In particular, the suspension, ongoing College review, and PROBE course completion requirements serve both general and specific deterrence functions.

In order to maintain the integrity of the Quality Assurance program, whose objective is to promote the protection of the public, it is important that this Member specifically, and all Members in general, treat their professional obligations to the College seriously. The proposed penalty set out in the Joint Submission achieves these objectives.

The objective of rehabilitation and remediation will also be achieved by the Member participating in the Probe course together with the submission of comprehensive reports at twelve month intervals over the next three years.

By way of mitigation, the Panel notes that the Member has co-operated with the College and, by agreeing to the facts and a proposed order, has accepted responsibility for his actions. By admitting to the allegations of professional misconduct and co-operating with the College, the Member has avoided significant time, effort and cost in the disciplinary process. The Member's previous record of discipline is unblemished. Finally, by the date of the hearing the Member had already complied with paragraph 3(a) of the Joint Submission by successfully completing and submitting his 2014 Professional Portfolio.

The penalty imposed is proportionate to the professional misconduct and fits within the range of penalties imposed in similar cases.

### **Reprimand**

At the conclusion of the hearing, the Member indicated that he was prepared to receive the reprimand ordered by the Panel. The Member signed a written waiver of appeal. Accordingly, the Panel delivered the reprimand.

