Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF MEDICAL DOCTORS, INC. ("MDI")/ MAKATI MEDICAL CENTER (2009 CERTIFICATION ON EXTENT OF COMPLIANCE WITH MANUAL ON CORPORATE GOVERNANCE)
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SEC En Banc Case No. 10-11-247

DECISION

This resolves the Notice of Appeal and Memorandum of Appeal dated 17 October 2011 filed by Petitioner-Appellants Medical Doctors, Inc./Makati Medical Center (**"MDI"**), through counsel, on October 18, 2011 to assail the Letter-Resolution of the Corporation Finance Department (now known as the "Corporation Governance and Finance Department or **"CGFD"**).

THE PARTIES

Appellant **MDI** is a corporation duly organized and existing under the laws of the Philippines with office address at No. 2 Amorsolo Street, Makati City, primarily engaged in the hospital business.

STATEMENT OF THE CASE

On 29 January 2010, appellant through counsel, filed the required 2009 Certification in compliance with the Manual on Corporate Governance before the CFGD via registered mail, attaching therein the original copy of the registry receipt and the Corporate Governance Self-Rating Form[1] (CG-SRF). Subsequently, MDI received a letter[2] from the CGFD on 2 July 2010 stating that the latter has yet to file its 2009 Certification. Thus, MDI was ordered to submit the same within five (5) days from actual receipt of said letter.

MDI replied through a letter dated 27 July 2010[3] that it has already submitted the required certification. Again, MDI received[4] another letter dated 6 September 2010[5] from the CGFD, informing MDI that the latter only

[1] Memorandum of Appeal, Annex B of Annex "A-Appeal".
[2] *Id.*, Annex C of Annex "A-Appeal".
[3] *Id.*, Annex D of Annex "A-Appeal".
[4] Received on September 20, 2010.
[5] Memorandum of Appeal., Annex E of Annex "A-Appeal".

submitted the CG-SRF and not the required 2009 Certification, which is SEC Form MCG-2002, ordering the latter to submit the 2009 Certification within five (5) days from receipt thereof. Thus, on 24 September 2010, MDI submitted said Certification in the manner prescribed by the CGFD as per its last letter.

In a letter dated 20 July 2011[6], the CGFD informed MDI of its non-compliance with the Revised Code of Corporate Governance for its failure to timely file the 2009 Certification. Hence, MDI was assessed the monetary penalty of Two Hundred Eighty-Six Thousand Pesos (Php 286,000.00). MDI asked for a reconsideration of the same with the CGFD through a letter dated 18 August 2011[7] alleging that MDI exercised diligence in filing the 2009 Certification and that it even submitted the CG-SRF despite not being required to do so under the law. The same was denied by the CGFD through another letter dated 16 September 2011[8]

Hence, this instant Notice of Appeal and Memorandum of Appeal. The CGFD failed to file its Reply-Memorandum despite being ordered to do so.

ISSUE/S

Upon perusal of said Notice of Appeal and Memorandum of Appeal, this Commission finds that the sole issue raised by appellant is whether or not MDI violated the rule on the Revised Code of Corporate Governance with respect to the submission of a Certification by Compliance Officers of a Corporation.

DISCUSSION

This Commission finds the Notice of Appeal and Memorandum of Appeal bereft of merit.

Article 2, subparagraph M(iii) of the Revised Code of Corporate Governance ("RCCG") provides that:

> "The Board shall appoint a Compliance Officer who shall report directly to the Chair of the Board. He shall perform the following duties:
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[6] Memorandum of Appeal, Annex F of Annex "A-Appeal".
[7] *Id.*, Annex A of Annex "A-Appeal".
[8] *Id.*, Annex "B-Appeal".

(iii) **Issue a certification every January 30th of the year** on the extent of the corporation's compliance with this Code for the completed year and, if there are any deviations, explain the reason for such deviation." (Emphasis supplied)

Moreover, Article 10 of the RCCG also provides that **the Commission may require them to accomplish annually a scorecard** on the scope, nature and extent of the actions they have taken to meet the objectives of this Code to monitor the compliance of corporations covered under the Code. Otherwise, the Commission may impose a fine of not more than Two Hundred Thousand Pesos (P200,000) shall, after due notice and hearing, be imposed for every year that a covered corporation violates the provisions of this Code, without prejudice to other sanctions that the Commission may be authorized to impose under the law[9].

The RCCG is clear when it stated the Compliance Officer of a corporation shall issue a **CERTIFICATION** every January 30th of the year. Here, MDI consistently alleges that it already submitted said Certification on 29 January 2010. However, appellant failed to observe that what it submitted on said date was the CG-SRF, which was in the nature of a scorecard and not a Certification. It was only 24 September 2010 when MDI submitted the 2009 Certification required under the RCCG despite being given many extensions by appellee. This is already a clear violation of the RCCG and warrants the imposition of a fine against appellant MDI.

Assuming that what MDI submitted on 29 January 2010 was the proper Certification required by the RCCG, it cannot pass the blame to the Post Office that the SEC belatedly received the same. MDI, knowing of the inefficiency of the Postal Service, as stated in its letters and Memorandum of Appeal, could have served said documents personally to the SEC considering that it still had until 30 January 2010 to do the same. This fact further belies its reasoning that said documents cannot be served personally due to time constraint.

Finally and with respect to appellant's allegation that it is not required to submit CG-SRF Form since it is not a publicly-listed country, the same deserves scant consideration. This is because the RCCG empowers the SEC to require corporations to submit a scorecard in order to meet the objectives of the Code.

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[9] Revised Code of Corporate Governance, Article 11.

With these circumstances at hand, this Commission finds no cogent reason to relax the rules in favor of appellant considering that it failed to comply with the rules despite being given several notices and opportunities to submit the subject Certification by the CGFD through its letters. However, this Commission finds the penalty imposed by the CGFD excessive since the RCCG expressly provides that the Commission may only impose a fine of not exceeding Two Hundred Thousand Pesos (Php 200,000.00) in case of violation of the provisions of the RCCG.

WHEREFORE, premises considered, the Notice of Appeal and Memorandum of Appeal filed by appellants is hereby **DISMISSED** for lack of merit. Appellant MDI is hereby ordered to **PAY** the amount of **TWO HUNDRED THOUSAND PESOS (PHP 200,000.00)** as penalty for violating the provisions of the Revised Code of Corporate Governance.

Let a copy of this *Decision* be furnished to the Corporation Governance and Finance Department for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines; 9 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

*Commissioner on leave.