

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

PANEL:

Kevin Cloutier, RO – Panel Chair
Mike Smart, RO
Tonya Nahmabin, RO
Diana Bristow, Public Member
Stephen Kinsella, Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan</u>
)	College of Opticians of Ontario
)	
- and -)	
)	<u>No One Appearing</u>
)	For the Member,
)	Lou Noah Tsan
)	
LOU NOAH TSAN)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: November 19, 2020

DECISION AND REASONS

This matter came for hearing before a Panel¹ of the Discipline Committee on November 19, 2020 at the College of Opticians of Ontario (the “College”) at Toronto.

This matter was heard electronically, by way of video conference.

¹ During the course of the hearing, Ms. Nahmabin advised that she knew Mr. Tekeste, one of the witness’ called to provide evidence. She confirmed however that they had been employed by the same company, but that they did not work at the same location with any regularity. She acknowledged that they may have worked one or two shifts together, but that she could not remember. Given the nature of Ms. Nahmabin’s relationship with the witness, the College indicated that it had no concern with Ms. Nahmabin’s continued involvement on the panel. After deliberations, the panel concluded that Ms. Nahmabin’s connection to the witness did not give rise to any actual or perceived bias. The panel was satisfied that Ms. Nahmabin could continue as a member of the panel and could provide her objective assessment of the evidence.

At the outset of the hearing, the Panel was advised that the Member was not expected to attend. The College filed evidence to satisfy the Panel that the Member was served notice of the hearing date, time and hearing platform. Despite repeated attempts to contact the Member via email, regular mail and with the assistance of an investigator, the Member never responded to the College.

Section 39(2) of the *Regulated Health Professions Act* provides that where a notice is delivered to a person by way of mail to that person's last known address, there is a rebuttable presumption that the notice was received on the fifth day after mailing.

The Panel is satisfied that the Member was served the Notice of Hearing in accordance with s. 39(2) well in advance of the hearing date. In addition to serving the Member at his last known address, the College took steps to ensure that the Notice of Hearing was delivered to all of his known email addresses.

The Panel concluded that the Member was likely not interested in participating in the hearing, particularly since he had failed to respond to the initial complaint and the investigator's request for an interview. In the circumstances, the Panel chose to proceed with the hearing in the Member's absence.

The Allegations

The allegations against the Member Lou Noah Tsan as stated in the Notice of Hearing dated June 15, 2020 are as follows:

The Member

1. Lou Noah Tsan ("the Member") registered with the College of Opticians of Ontario (the "College") in or around 2004. In May 2008 the Member was suspended.
2. The Member remains suspended.
3. In or around 2018 the Member worked at and/or owned Stoga Optical in Kitchener Ontario.

Holding out as an Optician and dispensing eyeglasses

4. It is alleged that on or about May 15, 2018 SS advised an insurer that the Member dispensed eyeglasses to him at Stoga Optical.
5. It is alleged that on or about May 22, 2018 the Member advised an insurer that MT, a registered optician, worked at Stoga Optical. It is alleged that this was false and/or derogatory as MT has never worked at Stoga Optical.
6. It is alleged that the Member dispensed eyeglasses to patients and then issued invoices falsely identifying MT (by initials and registration number) as the dispensing optician.
7. It is alleged that on or about December 14, 2018 an undercover investigator attended at Stoga Optical. It is alleged that the only person present was the Member. It is alleged that the Member:

- a. Asked the undercover investigator to provide his existing glasses so he could measure the lenses and obtain the prescription;
- b. Advised the undercover investigator that he could provide a new set of glasses that day;
- c. Accepted \$200.00 in cash from the undercover investigator for a new set of glasses;
- d. Delivered a new set of glasses to the undercover investigator;
- e. Adjusted the new set of glasses on the undercover investigator; and/or
- f. Provided a receipt to the undercover investigator for the new set of glasses that identified the store as Village Vision Inc in Toronto, Ontario.

Allegations of Professional Misconduct

8. As a result of the above, it is alleged that the Member engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a. Making false or derogatory statements about a member to any person (paragraph 11);
 - b. Using a name other than the member's name, as set out in the register, in the course of providing or offering to provide services within the scope of practice of opticianry (paragraph 19);
 - c. Falsifying a record relating to the member's practice (paragraph 21);
 - d. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement (paragraph 23);
 - e. Contravening a provision of the *Act*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts (paragraph 26) including sections 4, and/or 9(3) of the Act and/or section 27 of the *Regulated Health Professions Act*; and/or
 - f. Engaging in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).

The Member's Plea

In light of the Member's absence, the Chair recorded a plea of "not guilty" on all of the allegations.

Overview

Mr. Tsan registered with the College in or around 2004. In May 2008, the Member's registration was suspended for the non-payment of fees. The Member remains suspended and significantly, was suspended during the relevant time period.

It is alleged that at least as of 2018, the Member was working at Stoga Optical as either an employee or owner of the store. The Member provided opticianry services, including fitting and dispensing eyeglasses, under the name and optician number of another optician.

It is alleged that the Member facilitated submissions to insurance plans under the name and optician number of another optician.

The Evidence

The Panel heard evidence from four witnesses and received a number of documents into evidence.

Witness #1- Angela Higham, coordinator - professional conduct at the College.

Ms. Higham reviewed the College's public register with respect to the Member's registration history. The Register revealed that the Member was presently on administrative suspension for non payment of fees and therefore not entitled to practice. Ms. Higham confirmed that the Member had been suspended in May 2008 and that there had been no change to his status.

The Panel was satisfied based on the documentary evidence and Ms. Higham's review that the Member was on an administrative suspension at the time he was alleged to have been practicing at Stoga Optical.

Witness #2- Christine Cay (alias) investigation analyst for Sunlife Financial ("Sunlife").

Ms. Cay is an investigative analyst with Sunlife. She explained that in her role she investigates claims filed by individual policy holders for health care, including optical services. Ms. Cay testified that she obtains information from other health care providers and tips from the general public.

Ms. Cay explained that she complained to the College in November 2018 with respect to the Member providing services at Stoga Optical to a number of her policy holders. She came to believe that the Member was providing optical services, without a license, by using the name and optician number of another optician.

Ms. Cay described for the Panel how she reached her conclusion. She first noticed Stoga Optical as a result of a street sign, on which the store was advertising free gifts with the purchase of optical services. She determined that Sunlife had processed approximately \$8000.00 worth of claims from Stoga Optical. Sunlife's records indicated that an optician with the initials "MT" and with a registration number 2029 had provided the services. Upon further investigation, Ms. Cay determined that there was no optician connected to Stoga Optical matching the initials or the registration number. Instead, Ms. Cay learned that the Member was the optician who had been providing optical care to Sunlife's policy holders and that he appeared to have been using MT's registration number on his invoices.

Ms. Cay provided the Panel with documents she collected from policy holders, which showed that invoices prepared at Stoga Optical for optical services listed MT as the optician and used MT's registration number. However, Ms. Cay also explained that upon further investigation she

discovered that the policy holders received optical services from someone named "Lou" and that when she called the store, she spoke with the Member who confirmed that he was the only optician onsite.

Ms. Cay explained that based on her investigation she was satisfied that the Member had been providing optical services to Sunlife's policy holders, using the name and optician number of another optician.

The Panel had no reason to doubt the reliability or credibility of Ms. Cay's evidence. She provided documents in support of her evidence. Her conclusions with respect to Stoga Optical were consistent with the other witness evidence the Panel received and the Panel was satisfied that Ms. Cay had no reason to mislead them by giving false or inaccurate testimony.

Witness #3- Mehari Tekeste, registered optician.

Mr. Tekeste has been a member of the College and has worked at Hakim Optical for several years. Mr. Tekeste confirmed his optician number is 2029. He indicated that he has never given anyone permission to use his name or optician registration number for the purpose of providing optical services.

Mr. Tekeste explained that approximately 18 years ago, the Member was a student optician at Hakim Optical on Weston Road. Mr. Tekeste and the Member worked together briefly at that time and did not work together again. Mr. Tekeste testified that at some point in the Spring 2018, the Member contacted him to see whether Mr. Tekeste would be willing to come and work with him at Stoga Optical. Mr. Tekeste declined the offer, explaining to the Panel that he had no interest in switching jobs and that he did not even know where Stoga Optical was located.

Mr. Tekeste learned through Sunlife's investigation that the Member had used his initials and registration number on an invoice for optical services. Mr. Tekeste said that upon learning this, he contacted the Member to tell him to stop using his number. Mr. Tekeste said that he threatened the Member that he would go to the police if he did not stop. Mr. Tekeste acknowledged that he did not contact the College about the fraudulent activity.

In the course of the examination, it became clear that Mr. Tekeste was not aware of the extent to which the Member appears to have misused Mr. Tekeste's registration number. Mr. Tekeste became very angry and upset as he was shown records indicating the misuse.

The Panel is satisfied that Mr. Tekeste was not involved in providing any optical services at Stoga Optical and that his testimony was credible. Mr. Tekeste provide the Panel with clear and direct information. His position with regard to the Member and Stoga Optical did not change from when he was first contacted by Ms. Cay for Sunlife. He clearly was not aware of the Member's misuse of this registration number. The Panel does note that while Mr. Tekeste chose not to notify the College at the time he first learned about the Member's conduct, he was cooperative and helpful in giving his evidence.

Witness #4- Ziggy Bardel investigator at Bernard and Associates.

Mr. Bardel is an investigator with Bernard and Associates. He was retained by the College to act as a “secret shopper” at Stoga Optical. In late 2018, Mr. Bardel attended Stoga Optical for the purposes of purchasing eyeglasses. Mr. Bardel explained that he was attended to by the Member who presented as the only optical professional on the premises. The Member provided the witness with a pair of eyeglasses by neutralizing Mr. Bardel’s lenses. Mr. Bardel confirmed that he only ever dealt with the Member while at Stoga Optical. It was the Member who helped him purchase the glasses and who dispensed them to him on a later date.

Mr. Bardel’s evidence was credible and reliable. He provided a clear and straightforward account of his dealings with the Member. He had a good memory of his interactions, which was consistent with the documents presented.

Decision and Analysis

Based on the evidence received, the Panel finds that the Member engaged in professional misconduct as alleged in the Notice of Hearing.

With respect to the allegation that he made false or derogatory statements about a member to any persons, the Panel is satisfied that the Member engaged in this conduct. The Panel was presented with several documents showing that the Member used Mr. Tekeste’s name and registration number when providing optical services to Sunlife policy holders.

With respect to the allegation that he used a name other than his, set out in the register, in the course of providing or offering to provide services within the scope of opticianry, the Panel is satisfied on the evidence presented that the Member engaged in this conduct. The Panel was presented with several documents (exhibits 6,8,13,14,15) that substantiate that the Member used Mr. Tekeste’s professional information on many invoices from Sunlife Financial insurance claims and on the receipt he provided Mr. Bardel, the investigator from Bernard and Associates. Further, Mr. Tekeste confirmed that he was not engaged in providing any optical services at Stoga Optical, lending further proof to the allegation that his name and registration number had been misused.

With respect to the allegation that he falsified a record relating to the member’s practice, the Panel is satisfied that the College has made this allegation out. The Panel was provided with many copies of invoices from the Member’s dispensary that clearly show that the Member wrote in Mr. Tekeste’s information, when Mr. Tekeste was in no way involved in providing the care or optical service.

With respect to signing or issuing, in the member’s professional capacity, a document that the member knows or ought to know contains a false or misleading statement, the Panel is satisfied that this allegation has been made out. Again, the documentary evidence clearly establishes that the Member purposely and continuously misled the public by issuing receipts that he knew contained information that was false.

With respect to contravening a provision of the *Act*, the *Regulated Health Professions Act*, or the regulations under either of those Acts, including section 4, and/or 9(3) of the *Act* and/or section

27 of the *Regulated Health Professions Act*, the Panel finds that the College has made this allegation out. The Member presented himself as a registered optician, signed invoices as such and held himself out to Mr. Bardel as a member of this College at a time when he was under an administrative suspension.

With respect to engaging in conduct or performing an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, the Panel is satisfied that the conduct engaged in would certainly be regarded as disgraceful, dishonourable and unprofessional. The Member engaged in many acts that overtly demonstrated to what lengths he would go to keep practicing as an optician even though he had been suspended. From falsifying receipts using another member's information, to dispensing eyewear while under administrative suspension, to completely ignoring the College while it was trying to conduct its investigation. The Member has shown complete disregard for public safety as mandated by the *Regulated Health Professions Act*.

Penalty

College's Submissions

Following the pronouncement of our decision on liability, the College made submissions with respect to penalty. The College sought an order from the Panel directing the Registrar to revoke the Member's certificate of practice. In making its request, the College recognized that revocation is the most serious penalty it could seek, but that in the circumstances it was appropriate.

The College argued that the Member brazenly dispensed, prescribed, held himself out and treated patients all while he was under suspension. He did so by misusing the name and optician registration number of another optician, putting that optician's profession and patients' at risk. Further, in choosing not to participate in the College's process, the Member has shown a complete disregard for the regulatory process, casting serious doubt as to his governability. This is not an appropriate case for remediation. There is simply nothing before the Panel to provide any comfort that the Member has learned his lesson or that he could learn from the misconduct.

The College recognized that the Member is presently suspended, but argued that an order for revocation is still warranted. The College explained that should the Member try to cure his administrative suspension, he should not be allowed back into the profession.

The College provided the Panel with three similar cases, where the Panel imposed severe sanctions, including revocation, for practicing while suspended. While the facts in each of the cases presented were different from the facts before the Panel, the College argued that the cases were nonetheless instructive.

Panel Decision

The Panel directs the Registrar to take steps to revoke Mr. Tsan's certificate of registration. Further, the Panel orders Mr. Tsan to pay a fine of \$5000.00.

The Panel is satisfied that this is an appropriate case for revocation. Mr. Tsan engaged in conduct which put the public at risk and which called into question his ability or willingness to be governed. He brazenly misused the name and registration number of another optician, with no regard for that optician or the public. His actions have brought discredit to him and to the profession. It is unacceptable for a member of this College to have misled the public in such a manner. Mr. Tsan has lost the privilege of membership.

The Panel concluded that the imposition of a fine was also appropriate in the circumstances. Mr. Tsan's misconduct resulted in a financial benefit to him. The Panel heard evidence from Sunlife that there were at least \$8000.00 worth of claims billed for Mr. Tsan's services. The fine will act as a clear deterrent to those considering engaging in similar conduct and sends a message to insurers and the public at large that the College takes this misconduct seriously.

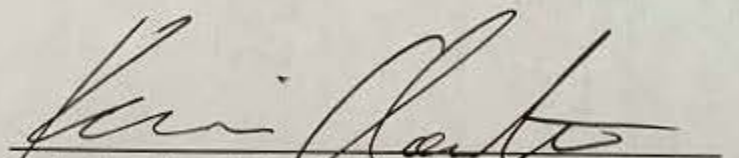
Costs

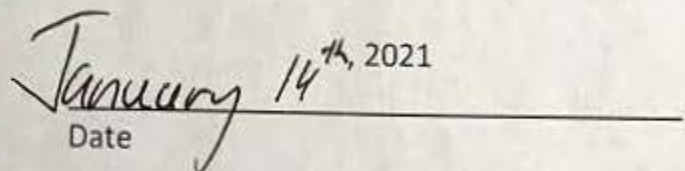
The College sought an order requiring Mr. Tsan to pay \$20,000.00 for the costs of this matter. The College argued that this was an appropriate case for costs.

While Mr. Tsan had a right to a fully contested hearing, he chose not to participate in the process. The rest of the membership should not be burdened with the full costs of the process. The College filed evidence showing that its costs of the investigation and hearing to date were approximately \$28,000.00. The College has sought two-thirds of this amount.

In the circumstances the Panel agrees that Mr. Tsan should pay to the College costs in the amount of \$20,000. The Panel finds that Mr. Tsan's lack of cooperation during the investigation lead to an increase in the College's costs.

I, **Kevin Cloutier** sign this Decision and Reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:


Kevin Cloutier, Chairperson and Professional Member


Date

Mike Smart, RO
Tonya Nahmabin, RO
Stephen Kinsella, Public Member
Diana Bristow, Public Member