

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

PANEL:

Stephen Kinsella, Chair & Public Member
Amber Fournier, Professional Member
Diana Bristow, Public Member
Jay Bhatt, Professional Member
Samir Modhera, Professional Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Anastasia Maria Hountalas</u>
)	College of Opticians of Ontario
)	
- and -)	
)	
STEVE RODNEY SANGER, 3277)	<u>Rebecca Young</u>
)	For the Member,
)	Steve Rodney Sanger
)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: March 19, 2021

DECISION AND REASONS

This matter came for hearing before a panel of the Discipline Committee on March 19, 2021 at the College of Opticians of Ontario (the "College") in Toronto. This matter was heard electronically by way of videoconference.

At the outset of the hearing, the College requested a publication ban on the name and any information that could identify the name of the patient involved in this matter. Mr. Sanger did not oppose the request. In the circumstances, the panel concluded that it was appropriate to make the publication ban order as requested. The order shall include the information disclosed at the hearing, the exhibits filed and these decision and reasons.

The Allegations

The allegations against the Member Steven Rodney Sanger as stated in the Notice of Hearing dated February 4, 2019 are as follows:

STATEMENT OF SPECIFIED ALLEGATIONS

The Member

1. At all material times, Steve Sanger ("the Member") was a registered optician in Ontario.
2. The Member does not hold a Refraction Designation from the College.
3. The Member is not a member of the College of Optometrists of Ontario nor the College of Physicians and Surgeons of Ontario.

Holding out as an optometrist and/or physician and/or specialist

4. It is alleged that between approximately August 23, 2016, and September 26, 2016 the Member held himself out, or permitted himself to be held out, as a member of the College of Optometrists of Ontario and/or the College of Physicians and Surgeons of Ontario by the following:
 - a. Performing an optometric examination on Patient A;
 - b. Permitting a "prescription" to be issued following the optometric examination;
 - c. Advising via phone inquiries that he was an optometrist;
 - d. Asking Patient A to provide his Ontario Health Insurance Plan Number;
 - e. Advising Patient A that he was an Ophthorologist;
 - f. Advising Patient A that he was better than an Optometrist;
 - g. Advising Patient A that he is a specialist;
 - h. Advising Patient A that he is an MD in Ontario; and/or
 - i. Advising Patient A that the test he provided on August 23, 2016 was better than a test performed by a general optometrist.
5. 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. He contravened a standard of the profession (paragraph 2);
 - b. He inappropriately used a term, title or designation in respect of his practice (paragraph 17);
 - c. He used a term, title or designation indicating or representing that he has a specialization in the practice of opticianry which he does not hold (paragraph 18);
 - d. He contravened a provision of the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts (paragraph 26) including section 27 of the *Regulated Health Professions Act*; and/or

- e. He engaged 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).

Prescribing eyeglasses, disclosing information, and billing improprieties

- 6. It is alleged that on approximately August 23, 2016, the Member:
 - a. Disclosed to Patient A that a famous actor was his patient and/or disclosed the name of the patient to Patient A;
 - b. Performed an optometric examination on Patient A;
 - c. Performed refractometry on Patient A;
 - d. Billed, or authorized the billing of, the insurer of Patient A for an optometry exam in the name of Dr. S;
 - e. Billed, or authorized the billing of, the insurer of Patient A for a retinal scan, that did not occur, in the name of Dr. S; and/or
 - f. Issued, or authorized the issuing of, a prescription for subnormal vision devices, contact lenses or eye glasses to Patient A which was incorrect.
- 7. 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. He contravened a standard of the profession (paragraph 2);
 - b. He did something to Patient A for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such a consent (paragraph 3);
 - c. He gave information about a patient to Patient A without the consent of the patient or his or her authorized representative or as required or allowed by law (paragraph 10);
 - d. He submitted an account or charge for services that he knows or ought to know is false or misleading (paragraph 24);
 - e. He contravened a provision of the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts (paragraph 26) including section 27 of the *Regulated Health Professions Act*;
 - f. He engaged 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).

Record Keeping

- 8. It is alleged that on approximately, August 23, September 7, September 19 and/or September 26, 2016, the Member failed to:
 - a. Document the identity of the optician who fit, verified and delivered the

subnormal vision devices, contact lenses or eye glasses;

- b. Document the ongoing management plan for Patient A, including the schedule for follow up; and/or
 - c. Retain a copy of the September 26, 2016 "prescription."
9. It is further alleged that the Member collected unnecessary information from Patient A, including Patient A's Ontario Health Insurance Plan number.
10. 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. He contravened a standard of practice of the profession (paragraph 2); and/or
 - b. He engaged 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).

Dispensing eyeglasses without a prescription

11. It is alleged that on approximately September 7, 2016, the Member dispensed subnormal vision devices, contact lenses or eye glasses to Patient A without a prescription from an optometrist or physician.
12. It is alleged that on approximately September 19, 2016, the Member dispensed subnormal vision devices, contact lenses or eye glasses to Patient A without a prescription from an optometrist or physician.
13. It is alleged that the subnormal vision devices, contact lenses or eye glasses dispensed by the Member to Patient A on approximately September 7 and September 19, 2016 were not appropriate as they were fabricated with an incorrect prescription.
14. 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. He contravened a standard of the profession (paragraph 2); and/or
 - b. He engaged 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).
15. In addition, it is alleged that as a result of the above the Member engaged in the following act of professional misconduct as set out in subsection 5(2) of the *Opticianry Act, 1991, S.O. 1991, c.34*:
- 5. (1) A member shall not dispense subnormal vision devices, contact lenses or eye glasses under the authority of section 4 except upon the prescription of an optometrist or physician.
 - 2. In addition to the grounds set out in subsection 51 (1) of the Health Professions Procedural Code, a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member contravenes subsection (1).

Issuing false prescriptions

16. It is alleged that the Member issues, or permits the issuance of false prescriptions with the signature of Dr. S already pre-signed.
17. 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. He contravened a standard of the profession (paragraph 2);
 - b. He signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement (paragraph 23); and/or
 - c. He engaged 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

The Member pleaded guilty to the allegations set out against him as more fully described in the Agreed Statement of Facts.

The panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

The Evidence

The parties advised the panel that they had prepared an Agreed Statement of Facts, which was presented as evidence in support of the allegations and the Registrant's admissions.

The Member

1. At all material times, Steve Rodney Sanger (the "Member") was a member of the College.
2. The Member has been registered of the College since 2005. A copy of the Member's Public Register Profile is attached as **Tab "A"**¹.
3. The Member does not hold a refraction designation from the College.
4. The Member's Public Register Profile lists the Sanger Contact Lens Clinic in Hamilton, Ontario as his practice location.
5. At the material times, the Member was an employee of the Sanger Eye Clinic in Hamilton, Ontario (the "Clinic").

Holding out as an optometrist and physician and specialist

¹ The Exhibits to the Agreed Statement of Facts have not been included in these decision and reasons.

6. It is agreed that between approximately August 23, 2016, and September 26, 2016, the Member performed acts and communicated information that caused Patient A to believe that the Member was an optometrist or a physician. Specifically, the Member did the following:
 - a. Performed a preliminary optometric examination on Patient A. Patient A believed this to be a complete optometric examination. A redacted copy of Patient A's patient record is attached as Tab "B"; and
 - b. Permitted a "prescription" to be issued following the preliminary optometric examination. A copy of the prescription is attached as Tab "C".
7. The Member displayed his Certificate of Registration with the College in his Clinic.
8. The College's *Standard 1: Competence* states that an optician shall only perform tasks for which he has sufficient knowledge, skill and judgment to perform competently and safely, and shall not engage in tasks that are beyond his capacity to perform. A copy of the College's *Standard 1: Competence* is attached as Tab "D".
9. Paragraph 9 of section 27(2) of the *Regulated Health Professions Act, 1991*, states that prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers is a controlled act.
10. It is agreed that performing an optometric examination and issuing a prescription are controlled acts within the meaning of section 27(2) of the *Regulated Health Professions Act, 1991*.
11. Opticians are not authorized to perform the controlled act noted in paragraph 9 above, pursuant to the *Opticianry Act, 1991*.

Professional Misconduct

12. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code"), and as set out in the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:
 - a. Paragraph 2: Contravening a standard of practice of the profession;
 - b. Paragraph 26: Contravening a provision of the Act, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts (including section 27 of the Regulated Health Professions Act, 1991); and
 - c. Paragraph 28: 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.

Prescribing eyeglasses, disclosing information, and billing improprieties

13. It is agreed that on approximately August 23, 2016, the Member did the following:

- a. Performed a preliminary optometric examination on Patient A. Patient A believed this to be a complete optometric examination (see Tab "B");
 - b. Performed refractometry on Patient A (see Tab "B");
 - c. Billed, or authorized the billing of, the insurer of Patient A for a preliminary optometry exam in the name of Dr. S, optometrist, when the exam was actually performed by the Member. A copy of Patient A's insurance claim summary is attached as Tab "E";
 - d. Billed, or authorized the billing of, the insurer of Patient A for a retinal scan, that did not occur on the date on which it was billed, in the name of Dr. S; and
 - e. Issued, or authorized the issuing of, a prescription for subnormal vision devices, contact lenses or eye glasses to Patient A which was incorrect.
14. It is agreed that the Member did not obtain informed consent from Patient A to perform the acts described in paragraph 13(a) and (b) above. It is further agreed that consent was required to perform these acts.
15. The College's *Standard 8: Refractions* states that an optician must obtain a refracting designation from the College and must adhere to specific criteria in order to refract. A copy of the College's *Standard 8: Refractions* is attached as Tab "F".
16. As noted above at paragraph 9, paragraph 9 of section 27(2) of the *Regulated Health Professions Act, 1991*, states that prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers is a controlled act.
17. As noted above at paragraph 10, it is agreed that performing an optometric examination and issuing a prescription are controlled acts within the meaning of section 27(2) of the *Regulated Health Professions Act, 1991*.
18. Opticians are not authorized to perform the controlled acts noted in paragraph 16 above, pursuant to the *Opticianry Act, 1991*.

Professional Misconduct

19. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:
- a. Paragraph 2: Contravening a standard of practice of the profession;
 - b. Paragraph 3: Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such a consent;
 - c. Paragraph 24: Submitting an account or charge for services that the member knows or ought to know is false or misleading;

- d. Paragraph 26: Contravening any provision of the Act, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts (including section 27 of the Regulated Health Professions Act, 1991); and
- e. Paragraph 28: 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.

Record Keeping

- 20. It is agreed that on approximately August 23, September 7, September 19 and September 26, 2016, the Member failed to keep records as required. Specifically, the Member failed to do the following:
 - a. Document the ongoing management plan for Patient A, including the schedule for follow up; and
 - b. Retain a copy of the September 26, 2016 "prescription."
- 21. The College's *Standard 5: Record Keeping* requires opticians to maintain certain information so that the patient can enjoy seamless and continuous care. A copy of the College's *Standard 5: Record Keeping* is attached at **Tab "G"**.

Professional Misconduct

- 22. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:
 - a. Paragraph 2: Contravening a standard of practice of the profession; and
 - b. Paragraph 28: 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.

Dispensing eyeglasses without a prescription

- 23. It is agreed that on approximately September 7 and 19, 2016, the Member dispensed subnormal vision devices, contact lenses or eye glasses to Patient A without a prescription from an optometrist or physician.
- 24. It is agreed that the subnormal vision devices, contact lenses or eye glasses dispensed by the Member to Patient A on approximately September 7 and September 19, 2016 were not appropriate, as they were fabricated with an incorrect prescription.
- 25. The College's *Standard 1: Competence* states that an optician shall only perform tasks for which he has sufficient knowledge, skill and judgment to perform competently and safely, and shall not engage in tasks that are beyond his capacity to perform; and is responsible for

inspecting any product, and determining the appropriateness of any advice or recommendation that is provided to a patient (see **Tab "D"**).

Professional Misconduct

26. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:

- a. Paragraph 2: Contravening a standard of practice of the profession; and
- b. Paragraph 28: 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.

27. It is also agreed that the Member engaged in the following act of professional misconduct as set out in subsection 5(2) of the *Opticianry Act, 1991*, which states:

- a. Subsection 5(1): A member shall not dispense subnormal vision devices, contact lenses or eye glasses under the authority of section 4 except upon the prescription of an optometrist or physician.
- b. Subsection 5(2): In addition to the grounds set out in subsection 51 (1) of the Health Professions Procedural Code, a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member contravenes subsection (1).

Issuing false prescriptions

28. It is agreed that the Member issued, or permitted the issuance of, a false prescription which was already pre-signed by Dr. S.

Professional Misconduct

29. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:

- a. Paragraph 2: Contravening a standard of practice of the profession;
- b. Paragraph 23: 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; and
- c. **Paragraph 28:** 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.

30. By this document the Member states that:

- a. he understands fully the nature of the allegations against him;
- b. he has no questions with respect to the allegations against him;

- c. he understands that by signing this document he is consenting to the evidence as set out above being presented to the Discipline Committee;
- d. he understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
- e. he understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication or website of the College;
- f. he understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
- g. he understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice and that he has had the opportunity to receive such advice.

Decision and Reasons

Having considered the Agreed Statement of Facts and the Member's admissions, the panel found the Member engaged in professional misconduct as set out in the evidence presented.

The panel accepts the Agreed Statement of Facts as it covers all of the evidence above constituting professional misconduct. The panel is satisfied that the conduct engaged in by the Member was professional misconduct because the Member caused a patient to believe he was an Optometrist, performed the act of refracting, dispensed eyeglasses based on that incorrect prescription and incorrectly billed the patient's insurance company. The Member's conduct was disgraceful, dishonorable and unprofessional.

Penalty and Costs

The parties advised that an agreement had been reached on all elements of a penalty, except for the length of the suspension. The parties filed with the panel a Joint Submission on Order and Costs (Exhibit #3), which provides as follows:

1. The following would be an appropriate order as to penalty and costs in this matter:
 - a. The Member is required to 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.
 - b. The Registrar is directed to suspend the Member's certificate of registration for a period to be determined by the Discipline Committee.
 - c. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on the Member's certificate of registration:

- i. Requiring the Member to successfully and unconditionally complete the ProBE ethics course, at his own expense, within five (5) months of the date of the Order of the Discipline Committee;
 - ii. Requiring the Member to successfully complete a record keeping course, pre-approved by the Registrar, at his own expense, within five (5) months of the date of the Order of the Discipline Committee;
 - iii. Requiring the Member to post a sign in every location of the Sanger Eye Clinic and any other clinic that the Member works at or owns clearly stating that the Member is not an optometrist and is not authorized to perform optometric acts; and
 - iv. Requiring the Member to complete up to four (4) random practice inspections, at his own expense.
- d. The Member is required to pay to the Minister of Finance a fine in the amount of \$500.00 within one (1) month of the date of the Order of the Discipline Committee.
- e. The Member is required to pay to the College costs in the amount of \$20,000.00 within one (1) month of the date of the Order of the Discipline Committee.
- 2. The College and the Member will be making independent submissions as to the length of the suspension that should be imposed on the Member's certificate of registration.
- 3. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
- 4. The Member acknowledges that he has received independent legal advice.

Parties' Submissions on Length of the Suspension

The College argued that the panel should impose a lengthy suspension, in the range of five months given the nature of Mr. Sanger's misconduct. Counsel submitted that such a suspension was in line with penalties ordered in similar cases and would send a clear message to both Mr. Sanger and the profession as a whole. Mr. Sanger's misconduct included submitting false information to an insurer, dispensing eyeglasses without a prescription and holding himself out as an optometrist or physician. He interacted with Patient A in a manner that lead the patient to believe that they were dealing with a specialist. Mr. Sanger knew or ought to have known that his conduct was misleading.

In response, Mr. Sanger argued that the misconduct related to one patient and in the circumstances should not attract a lengthy suspension. Mr. Sanger argued that a suspension of two to three weeks was in line with previous cases. Counsel argued that the panel should consider the fact that Mr. Sanger admitted to the allegations, thereby dispensing of the need for a full hearing.

When reviewing the previous cases, it was noted that the cases with suspensions of five months were the result of a repeat offence or an offence of a more serious nature, while cases with suspensions of only 2-3 weeks were the result of only one finding of professional misconduct or of a less serious nature.

Order

The panel accepted the Joint Submission and advised the parties that it would make an order accordingly. With respect to the length of the suspension, the panel concluded that a three-month suspension was appropriate.


Reasons for Penalty and Costs Order

The panel accepted the joint submission and decided that a three month suspension was appropriate in this case because there were four separate findings of professional misconduct. Where a 2-3 week suspension would be in line with previous cases, those cases were only dealing with one case of professional misconduct. This matter was viewed as more serious in nature due to the fact that there were several findings of professional misconduct, all of which were taken into account when deciding on the appropriate length of time for the suspension. In 2021, the College of Opticians of Ontario wants to hold opticians to a higher standard and therefore considered all findings of professional misconduct when making this decision.

A three-month suspension is reasonable. It sends a clear message to Mr. Sanger, the profession as a whole and to the public that the misconduct at issue here will attract a serious penalty.

I, **Stephen Kinsella**, 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:


Stephen Kinsella, Chair & Public Member


Date

Amber Fournier
Diana Bristow
Jay Bhatt
Samir Modhera

REPRIMAND

Mr. Sanger, as you know, this Discipline panel has ordered you be given an oral reprimand as part of the sanction imposed upon you. The reprimand should impress upon you the seriousness of your misconduct.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

You will be given an opportunity to make a statement at the end of the reprimand if you wish.

The panel has found that you have engaged in professional misconduct, in that you contravened a standard of practice of the profession and that you engaged in conduct which would reasonably be regarded as disgraceful, dishonourable or unprofessional.

Of special concern to us is the fact that the professional misconduct in which you engaged has involved conducting controlled acts not within an opticians scope of practice and engaging with patients – over a prolonged period of time – in a manner in which they were or could have been confused regarding your status as an optician, rather than an optometrist or ophthalmologist. This puts patients at risk and does a disservice to the integrity of the profession as a whole.

As I advised earlier, you will now be given an opportunity to make a comment if you wish to do so. This is **not** an opportunity for you to debate the merits or the correctness of the decisions we have made.

Thank you for attending today. We are adjourned.