

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

PANEL: Samir Modhera, RO – Panel Chair
Dennis O’Hagan, RO
Jamuna Balaram, Public Member
Omar Farouk, Public Member
Henry Wiersema, Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan and</u>
)	<u>Justine Wong</u>
)	College of Opticians of Ontario
)	
- and -)	
)	Registrant, Javad Sheidaei
)	Appearing for himself
)	
JAVAD SHEIDAEI)	
)	<u>Justin Safayeni</u>
)	Independent Legal Counsel
)	
)	
)	Heard: April 4, 2022

[Note that this decision has been re-issued to correct typographical errors]

DECISION AND REASONS

This matter came for hearing before a Panel of the Discipline Committee on April 4, 2022 at the College of Opticians of Ontario (the “College”) at Toronto.

This matter was heard electronically, by way of video conference. The Registrant was self-represented throughout the proceedings. He indicated at the outset of the hearing that he understood the hearing process and would be proceeding without legal counsel.

The Allegations

The allegations against the Registrant Javad Sheidaei as stated in the Notice of Hearing dated September 1, 2021 are as follows:

The Registrant

1. Javad Sheidaei (the “Registrant”) registered with the College of Opticians of Ontario (the “College”) in or around 1999.

Failure to Comply with the Quality Assurance Committee and with an Order of the Inquiries, Complaints and Reports Committee

2. In or around 2017 and 2018, the Registrant failed to complete all of the mandatory requirements of the College’s Quality Assurance program. The matter was subsequently referred to the Inquiries, Complaints and Reports Committee (the “ICRC”) of the College.
3. On or about June 18, 2019, a panel of the ICRC directed the Registrant to complete a specified continuing education or remediation program consisting of a Registrar-approved Ethics and Professionalism course (the “SCERP”), within 90 days of the date of the ICRC decision, and to appear before a panel of the ICRC for an oral caution upon successful completion of the ethics course.
4. From in or around June 2019 to in or around September 2019, the Registrant was repeatedly advised by the College of his obligation to comply with the decision of the ICRC.
5. The Registrant was then advised that he had until December 15, 2019 to comply with the decision of the ICRC.
6. The Registrant failed to complete the SCERP and to attend for the oral caution

Professional Misconduct Alleged

7. It is alleged that the above conduct constitutes professional misconduct pursuant to one or more of the following:
 - a. Clause 51(1)(b.0.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) (failing to co-operate with the Quality Assurance Committee); and/or
 - b. Clause 51(1)(c) of the Code, and as defined in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93 made under the *Opticianry Act, 1991*:
 - i. Paragraph 28: 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.

The Registrant’s Plea

The Registrant denied that he had committed any of the allegations of professional misconduct set out in the Notice of Hearing.

The Evidence

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

Witness #1- Peggy Dreyer, Manager of Professional Practice and Quality Assurance at the College

The College relied on the oral testimony of Peggy Dreyer, and through Ms. Dreyer introduced a number of documents, including emails and letters, in support of its position with respect to the allegations.

The College evidence established the following facts:

- Mr. Sheidaei was a registered optician at all times.
- In February 2017, Mr. Sheidaei was advised that he was selected to submit his professional portfolio and multi-source feedback survey (**MSF**) to the Quality Assurance Committee of the College.
- Mr. Sheidaei failed to submit the necessary information and documentation to the Quality Assurance committee as requested by December 2019.
- The College made numerous attempts to contact Mr. Sheidaei on this issue.
- Mr. Sheidaei had limited contact with the College during the period in question and suggested that he would forward his professional portfolio immediately.
- As of the date of the hearing, Mr. Sheidaei has still not provided the College with the information requested.
- As part of her oral testimony, Ms. Dreyer provided the panel with a chronological history of the College's correspondence and attempts to have Mr. Sheidaei comply with his ongoing professional requirements. Ms. Dreyer established during the course of questioning that the onus was on Mr. Sheidaei to update the College with his current contact information.

Ms. Dreyer's evidence was credible and detailed, and there was supporting documents to substantiate the College's efforts evidenced by way of emails and letters sent to the Respondent by Registered email.

Witness #2- Javad Shedaei, Registrant

Mr. Shedaei only provided oral testimony and did not tender any documents for consideration.

In his oral testimony, Mr. Shedaei stated that:

- He was a long-standing Registrant of the College and there have not been any complaints against him during his long history with the College.

- He was confused about who he spoke to at the College, and at times, appeared to express that he was not certain as to what requirements remained outstanding.
- He expressly admitted that he did not submit his professional portfolio for 2016, when he was selected to do so in 2017.
- He attributed his failure to submit the documentation on his ongoing medical issues;
- Ms. Shedaie confirmed that the address on record at the College has been his home address for the past several years. By way of explanation he indicated that his failure to submit documentation occurred because he did not receive the correspondence from the College as he was out of the country. Mr. Shedaie explained that while he was out of the country, his family returned mail back to the College as they were not sure how to respond to requests from College.
- Mr. Shedaie failed to mention if he followed up with the College upon his return.
- The Respondent indicated that he had multiple email addresses, and confirmed that this was the email address that he had provided to the College but added that he did not check the email address regularly

Decision and Analysis

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

With respect to the allegation that the Registrant failed to cooperate with the Quality Assurance Committee, the Panel is satisfied that the Registrant engaged in this conduct, based on the evidence presented, including the Registrant's own admissions.

The Panel found the Respondent's testimony as to the reasons for why he failed to submit the required documents was not credible. The Registrant had ample opportunity over the years to submit medical documentation supporting his explanations but had failed to do so. Even though the Respondent referenced names of treating physicians, he failed to provide medical documentation supporting same. The Respondent admitted that he had failed to provide material that was requested by the College, but failed to provide a coherent submission as to the reason.

With respect to the allegation that the Registrant 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, the Panel is satisfied that the conduct engaged in would certainly be regarded as disgraceful, dishonourable and unprofessional. The Panel found the Registrant's disregard for and failure to comply with the Quality Assurance Program for a prolonged period is conduct that amounts to being disgraceful, dishonourable and unprofessional.

Penalty

College 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 as follows:

1. Requiring the Registrant to be reprimanded by a panel of the Discipline Committee following the hearing, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College.
2. Directing the Registrar to suspend the Registrant's certificate of registration for a period of six (6) months effective immediately as of the date of this order, or until such time that the Registrant successfully completes all terms, conditions, and limitations ("TCLs") below, except for the TCLs under paragraphs 3b and 3f.
3. Directing the Registrar to immediately impose the following specified TCLs on the Registrant's certificate of registration:
 - a. Successful completion of outstanding Inquiries, Complaints and Reports Committee ("ICRC") orders to complete a specified continuing education and remediation program ("SCERP") and attend for an oral caution within three (3) months of the date of the order;
 - b. Successful completion of the Quality Assurance ("QA") program requirement to participate in the next cycle of the Multi-Source Feedback ("MSF") process within three (3) months of the MSF process' start date, and if the Registrar ascertains that the requirements are no longer possible to complete, the Registrar shall identify analogous requirements;
 - c. Successful completion of the QA program requirement to complete the total number of outstanding accredited continuing education hours required to remedy the deficit in hours identified as outstanding in the Registrant's incomplete 2016 Professional Portfolio—here, in the Registrant's case, all the hours as originally required for the 2016 Portfolio—within six (6) months of the order, and if the Registrar ascertains that the requirements are no longer possible to complete, the Registrar shall identify analogous requirements (for clarity, these accredited continuing education hours must be completed to remedy the Registrant's 2016 Professional Portfolio deficiency and may not also be counted towards the Registrant's current year QA program requirements);
 - d. A review of the College's Standards of Practice, Guidelines and Regulations, and confirming with the Registrar, in writing, that this has occurred, within three (3) months of the date of the order;
 - e. Successful completion of Chapter 1 of the College's Jurisprudence Tool Handbook and the corresponding Jurisprudence Tool Test, and confirming that this has occurred by providing the Certificate of Completion to the Registrar, within three (3) months of the order; and

- f. Following the order, the Registrant must respond, within fifteen (15) days, to all College communications that require a response.

The College submitted that this was an appropriate penalty to be imposed to address the principles governing penalty, which include public protection, general deterrence and specific deterrence. The College also reviewed similar fact scenarios of comparable cases, and the penalties imposed in those instances, in support of the College's position that this was an appropriate penalty under the circumstances.

Registrant Submissions

The Registrant submitted that no penalty be imposed and that he be provided with a further extension to complete the MSF and Professional Portfolio requirements. The Registrant noted that he is facing financial hardship due to the online competition and requested reprieve in the form of being able to pay any penalty by way of installment payments.

Panel Decision

The Panel makes the following decision and order with respect to penalty (with changes from the College's proposed position on penalty underlined):

1. The Registrant shall be reprimanded by a panel of the Discipline Committee following the hearing on a date to be scheduled, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College.
2. The Registrar shall suspend the Registrant's certificate of registration for a period of six (6) months effective immediately as of the date of this order, or until such time that the Registrant successfully completes all terms, conditions, and limitations ("TCLs") below, except for the TCLs under paragraphs 4b and 4f.
3. The six (6) month suspension referred to in paragraph 2 shall be lifted prior to six (6) months upon the Registrant complying with the TCLs described in paragraph 4 below, but in no case shall the suspension be less than four (4) months even if all such TCLs are fulfilled;
4. The Registrar shall immediately impose the following specified TCLs on the Registrant's certificate of registration:
 - a. Successful completion of outstanding Inquiries, Complaints and Reports Committee ("ICRC") orders to complete a specified continuing education and remediation program ("SCERP") and attend for an oral caution within three (3) months of the date of this order;
 - b. Successful completion of the Quality Assurance ("QA") program requirement to participate in the next cycle of the Multi-Source Feedback ("MSF") process within three (3) months of the MSF process' start date, and if the Registrar ascertains that the requirements are no longer

- possible to complete, the Registrar shall identify analogous requirements;
- c. Successful completion of the QA program requirement to complete the total number of outstanding accredited continuing education hours required to remedy the deficit in hours identified as outstanding in the Registrant's incomplete 2016 Professional Portfolio—here, in the Registrant's case, all the hours as originally required for the 2016 Portfolio—within six (6) months of this order, and if the Registrar ascertains that the requirements are no longer possible to complete, the Registrar shall identify analogous requirements (for clarity, these accredited continuing education hours must be completed to remedy the Registrant's 2016 Professional Portfolio deficiency and may not also be counted towards the Registrant's current year QA program requirements);
 - d. A review of the College's Standards of Practice, Guidelines and Regulations, and confirming with the Registrar, in writing, that this has occurred, within three (3) months of the date of this order;
 - e. Successful completion of Chapter 1 of the College's Jurisprudence Tool Handbook and the corresponding Jurisprudence Tool Test, and confirming that this has occurred by providing the Certificate of Completion to the Registrar, within six (6) months of this order; and
 - f. Following the order, the Registrant must respond, within fifteen (15) days, to all College communications that require a response.

The Panel is satisfied that this order is appropriate. The possibility of a reduced period of suspension if all TCLs are satisfied is something that has been applied in previous cases, including *COO v Truong*.

The Panel is confident that the suspension on these terms will ensure that the public is protected while the Registrant completes his remedial work and that it will serve as both a specific deterrent to the Registrant and a general deterrent to the Profession to the seriousness of these findings. By ignoring the requests from the Quality Assurance Committee, the Registrant showed a disregard of his obligations to maintain the standards of practice as required as a registrant of his profession. The College will not tolerate this type of behavior by its registrants and will take appropriate actions ensuring that the highest standards of professionalism is maintained.

Costs

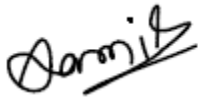
The College sought an order requiring the Registrant to pay \$9,190.64 in the costs of this matter, reflecting approximately 2/3rds of the legal and hearing costs associated with this proceeding, according to affidavit material filed by the College. (The College did not claim any costs related to an investigation.) The College argued that this was an appropriate case for costs.

The Panel agrees that the Registrant should pay the College costs in the amount of \$9,000.00.

Since the matter necessitated an investigation and extended involvement of external legal counsel and a hearing, it is fitting that the Registrant contributes costs in the amount of \$9,000.00. The Panel notes the Registrant's position that he will have difficulty paying costs, particularly on account of his license being suspended. As such, the Panel considers it appropriate that the payment of costs be made in instalments, according to the following schedule:

- \$1,500 to be paid on or before June 1, 2022;
- \$1,500 to be paid on or before August 1, 2022;
- \$1,500 to be paid on or before October 1, 2022;
- \$1,500 to be paid on or before December 1, 2022;
- \$1,500 to be paid on or before February 1, 2023;
- \$1,500 to be paid on or before April 1, 2023

I, **Samir Modhera** 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:



Samir Modhera, RO and Panel Chairperson

Date: April 29, 2022

Re-issued: May 24, 2022

Dennis O'Hagan, RO
Jamuna Balaram, Public Member
Omar Farouk, Public Member
Henry Wiersema, Public Member