

**DISCIPLINE PANEL
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

PANEL:

Neda Mohammadzadeh
Margaret Osborne
Gord White, Public Member
Behzad Safati

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan</u>
)	College of Opticians of Ontario
- and -)	
)	<u>Member</u> , Self Represented
)	
TIMOTHY WALLNER, R.O. 2000)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	Heard: November 23, 2018

DECISION AND REASONS

This matter came for hearing before a panel of the Discipline Panel on November 23, 2018 at the College of Opticians of Ontario (the "College") at Toronto.

The panel's full decision and reasons are as set out below.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated November 30, 2017 are as follows:

The Member

1. Timothy Wallner ("Mr. Wallner") has been a member of the College since 1992.

Quality Assurance Program

2. Pursuant to the s. 82(1) of the Code and s.9 and s.10 of the General regulation under the *Opticianry Act, 1991*, members of the College are

required to comply with the requirements of the College's Quality Assurance program. Those requirements include the following:

- a. Within 30 days of being notified of the request, a member shall provide accurate information to the Committee or an assessor about her self-assessment and continuing education or professional development.
 - b. Each year the Committee shall select at random ... the names of members required to undergo a peer and practice assessment.
3. On or about February 10, 2017, the Quality Assurance Committee notified Mr. Wallner by e-mail:
- a. to submit evidence of his annual continuing education and professional development activities (the "Professional Portfolio") no later than March 31, 2017; and/or
 - b. that he had been randomly selected to undergo a peer and practice assessment and to submit the Multi-Source Feedback (MSF) survey process by April 25, 2017.

MSF

4. On or about May 29, 2017, the Quality Assurance Committee contacted Mr. Wallner, by email and regular mail, and advised him that his MSF requirements were outstanding. The Quality Assurance Committee provided Mr. Wallner with an extension until June 30, 2017.
5. As of June 30, 2017, Mr. Wallner completed twelve of the required fifteen required surveys as part of the MSF.
6. As of today's date the remaining required surveys have not been received by the Quality Assurance Committee.

Professional Portfolio

7. On or about July 12 2017, the Quality Assurance Committee contacted Mr. Wallner, by email and registered mail (the "Registered Mail Letter"), reminding him of the March 31, 2017 due date for the Professional Portfolio. Mr. Wallner was asked to contact the College immediately.
8. The Registered Mail Letter was not claimed by Mr. Wallner.
9. Mr. Wallner did not contact the College to discuss the Professional Portfolio.
10. As of today's date the Professional Portfolio has not been received by the Quality Assurance Committee.

Referral by Quality Assurance Committee

11. On or about September 13, 2017, the Quality Assurance Committee referred Mr. Wallner to the Inquiries, Complaints and Reports Committee for failing to comply with the Quality Assurance Committee directions on the Professional Portfolio and the MSF and his failure to comply with the 2012 Undertaking.

Acts of Professional Misconduct

12. As a result of the above, it is alleged that Mr. Wallner engaged in professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code"), as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:
- a. He contravened a standard of practice of the profession (paragraph 2);
 - b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
 - c. He contravened any provision of the Act, *the Regulated Health Professions Act, 1991* or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 9, s. 10, and/or s. 11(4) of the General Regulation (paragraph 26); and/or
 - d. 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).
13. In addition, it is alleged that Mr. Wallner engaged in professional misconduct pursuant to s. 51(b.0.1) of the Code as he failed to co-operate with the Quality Assurance Committee.

The Member's Plea

The Member pleaded guilty to all of the allegations. With respect to the allegation set out at paragraph 12(d), the Member acknowledged that his conduct would reasonably be regarded as "unprofessional".

The Panel conducted an oral plea inquiry and was satisfied that the Member's plea was voluntary, informed and unequivocal.

The Evidence

The College filed an Agreed Statement of Facts (Exhibit #2), which provided as follows:

The Member

1. At all material times, Timothy Wallner (“Mr. Wallner”) was a registered optician in Ontario.
2. At certain material times Mr. Wallner suffered from health conditions which impacted his ability to contact the College about his obligations vis a vis the Quality Assurance Program. It is agreed that these health conditions did not impact his ability to comply with the Quality Assurance Program.
3. At all material times, Mr. Wallner’s contact information was as follows:
35 Cedarview Drive, Scarborough, ON M1C 2K5
t.j.wallner@icloud.com
Quality Assurance Program
4. Pursuant to s. 82(1) of the *Health Professions Procedural Code* (the “Code”) and ss. 9, and 10 of the General Regulation under the *Opticianry Act, 1991*, members of the College are required to comply with the requirements of the College’s Quality Assurance program. Attached as Tab “1” is a list of these and other relevant statutory provisions.
5. The College’s Quality Assurance Program includes (but is not limited to) the following components:
 - a. Professional Portfolio: All members are required to participate in the Professional Portfolio each year. The Professional Portfolio includes evidence of annual continuing education and professional development activities. These include accredited and self-selected credits and self-reflection which ensures members remain competent and current. All members are required to retain their Professional Portfolio for six years.
 - b. Competency Review Evaluation (CRE). Certain members are randomly selected to participate in the CRE. The CRE involves the member either submitting a copy of their Professional Portfolio or submitting a copy of their Professional Portfolio and engaging in a Multi-Source Feedback.
 - i. Multi-Source Feedback (MSF): The MSF involves colleagues and patients completing feedback surveys which help assess a member’s practice. The total amount of required surveys is fifteen (15).

Mr. Wallner is selected to participate in the CRE

6. On or about February 10, 2017, the Quality Assurance Committee notified Mr. Wallner by email that he had been randomly selected to participate in the CRE. On February 17, 2017, Mr. Wallner was sent a package by courier which advised him to do the following:
 - a. submit his Professional Portfolio no later than March 31, 2017; and
 - b. submit the MSF survey process by April 25, 2017.

Attached at Tab “2” is a copy of the letter sent by courier dated February 17, 2017.

Professional Portfolio

7. On or about April 7, 2017, the Quality Assurance Committee contacted Mr. Wallner by email and advised him that his Professional Portfolio had not been received by March 31, 2017. Mr. Wallner did not respond to this email.
8. On or about July 12 2017, the Quality Assurance Committee contacted Mr. Wallner, by email and registered mail (the “Registered Mail Letter”) and advised him that his Professional Portfolio had still not been received. Mr. Wallner was asked to contact the College immediately and advise of the status of the Professional Portfolio. Attached at Tab “3” is a copy of the Registered Mail Letter.
9. The Registered Mail Letter was not claimed by Mr. Wallner. Attached at Tab “4” is a copy of the Delivery Progress.
10. At no point in time did Mr. Wallner contact the College to discuss the Professional Portfolio.
11. As of March 31, 2017 Mr. Wallner did not submit the Professional Portfolio.

MSF

12. On or about May 29, 2017, the Quality Assurance Committee contacted Mr. Wallner, by email and regular mail, and advised him that his MSF requirements were outstanding. The Quality Assurance Committee provided Mr. Wallner with an extension until June 30, 2017. Attached at Tab “5” is a copy of the letter dated May 29, 2017.
13. As of June 30, 2017, Mr. Wallner only completed twelve of the required fifteen surveys as part of the MSF.

2012

14. In 2012, Mr. Wallner failed to comply with the Quality Assurance Committee directions on the Professional Portfolio and the MSF.

Acts of Professional Misconduct

15. As a result of the above, it is agreed that Mr. Wallner engaged in professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:

- a. He contravened a standard of practice of the profession (paragraph 2);
 - b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
 - c. He contravened a provision of the *Act*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, namely s. 82(1) of the *Code* and s. 9, and s. 10, of the General Regulation (paragraph 26); and
 - d. 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 unprofessional (paragraph 28).
16. In addition, it is agreed that Mr. Wallner engaged in professional misconduct pursuant to s. 51(b.0.1) of the Code as he failed to co-operate with the Quality Assurance Committee.
17. By this document Mr. Wallner 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 in the Agreed Facts 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 depending on the penalty ordered by the Discipline Committee, the decision of the 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

The panel concluded that the Member engaged in professional misconduct as set out in the Notice of Hearing and with respect to the allegation at paragraph 12(d), the panel finds that the Member's conduct would reasonably be regarded by members of the profession as unprofessional.

Reasons for Decision

The panel deliberated and found that the College satisfied it on a balance of probabilities that the Member engaged in professional misconduct as alleged in the Notice of Hearing.

On the strength of the Member's plea and the Agreed Statement of Facts, the panel was satisfied that Mr. Wallner's conduct amounted to professional misconduct. His failure to respond to the Quality Assurance Committee's requests was problematic. Members of this College understand that it is a critical component of membership and self-regulation to engage with the Quality Assurance Committee, as required and as requested.

It was clear that the Member received and ignored or failed to meaningfully respond to requests of both the Quality Assurance Committee and the College, a fact that was not contested by the Member.

Members of this College have an obligation to respond to College inquiries and to, in particular, participate fully in reviews/audits by the Quality Assurance Committee. The public must have confidence that the College can regulate its members and that its members accede to and respect the College's jurisdiction over them.

Penalty

Counsel for the parties advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submission as to Penalty and Costs provides as follows:

The College of Opticians of Ontario (the "College") and Timothy Wallner ("Mr. Wallner") agree and jointly submit that the following would be an appropriate order as to penalty and costs in this matter:

1. Mr. Wallner is required to appear before a panel of the Discipline Committee to be reprimanded, within 60 (sixty) days of the date of this Order;
2. The Registrar is directed to immediately suspend the Mr. Wallner's Certificate of Registration for a period of four (4) months, to commence on a date to be selected by the Registrar, of which four (4) months shall be suspended if Mr. Wallner completes the terms, conditions and limitations set out in paragraphs 3(a) and 3(b) of this order within one (1) month of the date of this order.

3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Wallner's Certificate of Registration:
 - a. Requiring Mr. Wallner to successfully complete the 2017 Competency Review Evaluation, within three (3) months of the date of this order;
 - b. Requiring Mr. Wallner to submit to the Registrar a reflective essay, not to exceed one thousand (1000) words, setting out what he has learned as a result of this investigation and hearing, and how he will implement new strategies in his practice to ensure compliance with orders of the College, within three (3) months of the date of this order; and
 - c. Requiring Mr. Wallner to successfully complete the 2019 Competency Review Evaluation pursuant to the time frame imposed by the Quality Assurance Committee.
4. The Member is required to pay to the College costs in the amount of \$2,500.00 within eight (8) months of the date of this order. The Registrar is authorized to impose an installment plan to ensure regular and consistent payment of the costs order.

Penalty and Costs Decision

The panel accepts the Joint Submission and accordingly orders:

1. Mr. Wallner is required to appear before a panel of the Discipline Committee to be reprimanded, within 60 (sixty) days of the date of this Order;
2. The Registrar is directed to immediately suspend the Mr. Wallner's Certificate of Registration for a period of four (4) months, to commence on a date to be selected by the Registrar, of which four (4) months shall be suspended if Mr. Wallner completes the terms, conditions and limitations set out in paragraphs 3(a) and 3(b) of this order within one (1) month of the date of this order.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Wallner's Certificate of Registration:
 - a. Requiring Mr. Wallner to successfully complete the 2017 Competency Review Evaluation, within three (3) months of the date of this order;
 - b. Mr. Wallner is required to submit to the Registrar a reflective essay, not to exceed one thousand (1000) words, setting out what he has learned as a result of this investigation and hearing, and how he will implement new strategies in his practice to ensure compliance with

orders of the College, within three (3) months of the date of this order; and

- c. Mr. Wallner is required to successfully complete the 2019 Competency Review Evaluation pursuant to the time frame imposed by the Quality Assurance Committee.

4. The Member is required to pay to the College costs in the amount of \$2,500.00 within eight (8) months of the date of this order. The Registrar is authorized to impose an installment plan to ensure regular and consistent

The panel understands that it should not depart from a joint submission unless to accept it would bring the administration of this process into disrepute or otherwise be contrary to the public interest.

In this case, the panel was satisfied that the proposed penalty is reasonable. The panel was presented with evidence with respect to Mr. Wallner's personal circumstances, which make the suspension provisions of the penalty proposed appropriate. The panel is satisfied that Mr. Wallner did not intend to ignore the requests from the Quality Assurance Committee and as such concludes that the penalty imposed appropriately addresses the principles governing penalty, which include public protection, general deterrence and specific deterrence

At the end of the hearing, the panel delivered its Reprimand to the Member, who waived his right to appeal. The Reprimand is found at Schedule "A" attached to these Reasons.

I, Neda Mohammadzadeh, 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:



Dec04/2018

Neda Mohammadzadeh, Chairperson

Date

Neda Mohammadzadeh
Margaret Osborne
Gord White
Behzad Safati

Schedule “A”

Reprimand

We have deliberated. The pane will order penalty and costs as set out in the Joint Submission.

Mr. Wallner, are you prepared to waive your right to appeal receive your reprimand? As you know, Mr. Wallner, as part of its penalty order this Discipline panel has ordered you that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

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.

The panel has found that you have engaged in professional misconduct in that you failed to respond to or participate in the Quality Assurance Program as required.

While we understand that you have had some personal difficulties, we still need to make clear to you that your conduct is unacceptable.

Of special concern to us is that fact that the professional misconduct in which you engaged involved your failure to respond in an appropriate or timely manner to the College.

We also want to make it clear to you that while the penalty that this panel has imposed upon you is a fair penalty, a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

Thank you for attending. We are adjourned.