

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

**PANEL:** David Milne, Chairperson and Public Member  
Rob Vezina, Professional Member  
Ingrid Koenig, Professional Member  
Bryan Todd, Professional Member  
Eve Hoch, Public Member

**BETWEEN:**

COLLEGE OF OPTICIANS OF ONTARIO	)	
	)	<u>Rebecca Durcan</u>
	)	College of Opticians of Ontario
- and -	)	
	)	
	)	Shahram Valizadehasa, self-represented
SHAHRAM VALIZADEHASA, C- 4407	)	
	)	<u>Aaron Dantowitz</u>
	)	Independent Legal Counsel
	)	
	)	
	)	Heard: October 21-22, 2015

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee on October 21 and 22, 2015 at the College of Opticians of Ontario (the "College") at Toronto.

**The Allegations**

The allegations against the Member as stated in the Notice of Hearing dated May 25, 2015 are as follows:

1. Shahram Valizadehasa ("Mr. Valizadehasa") has been a member of the College of Opticians of Ontario ("the College") since approximately 2009.
2. At all material times, Mr. Valizadehasa operated Fusion Eye Care located at 130 Davis Drive, Newmarket, Ontario (the "Store").

3. On or around May 29, 2013, Mr. Valizadehasa was administratively suspended from the College. As a result, Mr. Valizadehasa was prohibited from using the title "optician", performing the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and holding himself out as a member of the College.
4. Despite being suspended from the College, Mr. Valizadehasa continued to display his College certificate of registration, use the title "optician", perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and hold himself out as a member of the College.
5. It is alleged that on or around May 26, 2014, ES went to the Store and purchased two pairs of eyeglasses from Mr. Valizadehasa. ES paid in full.
6. On or about June 26, 2014, Mr. Valizadehasa dispensed the first pair of eyeglasses to ES.
7. Soon thereafter, ES determined that the eyeglasses were hurting his eyes.
8. It is alleged that when ES returned to the Store to complain about his eyeglasses and pick up his second pair of eyeglasses, the Store had closed down without ES receiving any notice from Mr. Valizadehasa.
9. As a result of the above, the College alleges that Mr. Valizadehasa engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
  - a) He discontinued professional services contrary to the terms of an agreement between himself and ES (paragraph 8);
  - b) He inappropriately used a term, title or designation (paragraph 17);
  - c) He contravened a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts (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).
10. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Mr. Valizadehasa in support of the allegations in the Notice of Hearing.

### **Member's Plea**

The Member pleaded not guilty to the allegations.

## **The Evidence**

The college brought forth 3 witnesses to give evidence on behalf of the prosecution for the panel to hear: the complainant, ES; Keisha Simpson, registration manager of the College; and Amy Shillington, an investigator. The complainant testified by telephone. The member objected to this form of testimony, but after hearing from the member and the College on this point, the panel ruled that the complainant could testify in this manner, because the member had not pointed to any significant prejudice.

The member had sold to the complainant three pairs of eyeglasses in total (*for which the complainant had paid upfront*), one for the complainants' wife and two pairs to the complainant himself. The member delivered two pairs but did not deliver the final pair. The complainant did attend at the members store to get his 3<sup>rd</sup> pair of glasses and found that the member's store had been closed by the landlord for rental arrears and therefore was unable to pick his glasses. The member had failed to notify the patient of the closing of his store.

The member at that time had been on administrative suspension for nonpayment of fees, and during the time of suspension there had been no other optician in good standing with the College performing dispensing at the member's store.

The panel heard evidence from Ms. Shillington that she had attended at the member's store after it was closed by the landlord, and had taken photographs of various items and locations in the store, which were made exhibits at the hearing. Ms. Shillington's evidence showed that during this time of suspension the member had been holding himself out as an optician and performing authorised acts of dispensing without lawful authority.

The member stated that he had purchased the store and that construction had curtailed a lot of his business. He further testified that this was the second time he had had his store closed by the landlord for rental arrears. However, it was established on cross-examination that the member on this occasion had made no effort to contact the landlord to allow him to enter the store to retrieve his patient records to enable him to notify patients of the current status of his store. The member further states that he was dispensing while an optometrist was at his store and that there was an optician at his place of business on occasion, however there was no independent testimony of either of these submissions. In addition, the member brought forth this different version of the facts without questioning the complainant about it, and therefore without satisfying the provisions of the Browne & Dunn evidentiary rule. The member admitted that he had failed to notify the college of a current address where he could be contacted.

## **Decision**

The panel deliberated, and found the Member guilty of professional misconduct as alleged in para. 9 of the Notice of Hearing. Specifically, the panel found the Member guilty of professional misconduct pursuant to section 1 of Ontario Regulation 828/93 under the *Opticianry Act, 1991*, S.O. 1991, c.34, namely (paragraph 8) discontinuing professional services contrary to the terms of an agreement between himself and ES; (paragraph 17) inappropriately using a term, title or designation; (paragraph 26) contravening a provision of the *Opticianry Act, 1991*, the *Regulated*

*Health Professions Act, 1991* or the regulations under either of those Acts and; (paragraph 28) engaging in conduct or performing an act, in the course of practising opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### **Reasons for Decision**

The panel found for the allegations set out in Sec. 9 of Schedule “A” of the Notice of Hearing in the following manner:

A) The member had sold two pairs of glasses to the complainant and had failed to deliver the second pair of glasses, further the member failed to make any attempt to retrieve the patient’s glasses or file from his store.

B) The member continued to display his British Columbia college registration certificate and using the title OPTICIAN thus holding himself out as a member in good standing while under a suspension from the College of Opticians of Ontario.

C) Based on evidence the panel finds that the member contravened the following provisions of the Opticianry Act 1991:

**Section 4: In the course of engaging in the practice of opticianry, a member is authorized, subject to the terms, conditions and limitations on his or her certificate of registration, to dispense subnormal vision devices, contact lenses of eyeglasses. 1991,c.34 s.4**

**Section 9.1: No person other than a member shall use the title “optician” a variation or an equivalent in other language.**

**Section 9.3: No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as an optician or in a speciality of opticianry.**

D) The member dispensed glasses while knowingly under suspension from the College.

### **PENALTY**

#### **Evidence and Submissions of the Parties on Penalty**

The College submitted that the appropriate penalty was as follows:

1. The Member is required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;

2. The Registrar is directed to suspend the Member's certificate of registration for ten (10) months, to commence on a date to be set by the Registrar.
3. The Registrar is directed to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
  - a) The Member is to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in ethics, within 1 (one) year of the date of this Order.  
The cost of the ethics course will be borne by the Member.
  - b) The Member is to advise the College, ten (10) days in advance of any suspension or revocation, of the name of the registered optician who will assume the operation of the Member's store(s).

The panel heard submissions from the College that the member had failed to respond to requests from the prosecution to lessen the amount of time to conclude this matter by way of an agreed statement of facts and such, so this necessitated the prosecution to employ further resources and time to prove its allegations. The College indicated that while this should not be treated as an aggravating factor, it means that the member does not benefit from the mitigating effect that normally attends a guilty plea.

The prosecution submitted that this should be a case where the member should receive a penalty in the form of a further suspension and that the member shall complete a course in ethics within a specified time period and a reprimand.

The prosecution provided a case (*College of Opticians v Moffatt*), which was not necessarily on point but close in content. In the *Moffatt* case, which also involved the use of the title "optician" while administratively suspended, the member, who admitted the facts and agreed to a joint submission on penalty, received a penalty that included a six-month suspension, with one month to be suspended on successful completion of an ethics course.

The member did not take issue with the ethics course component of the College's requested penalty, but regarding the requested suspension, he submitted that he could not afford to be out of work, having regard to his personal and financial circumstances.

### **Penalty Decision**

The panel deliberated and decided to make the following order:

1. The Member is required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
2.
  - a) The Registrar is directed to suspend the Member's certificate of registration for four (4) months, to commence on a date to be set by the Registrar.
  - b) The Registrar will suspend one (1) month of the suspension ordered in paragraph 2 (a) if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 3 (a).
3. The Registrar is directed to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
  - a) The Member is to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in ethics, within three (3) months of the date of the suspension. The cost of the ethics course will be borne by the Member.
  - b) The Member is to advise the College, ten (10) days in advance of any suspension or revocation, of the name of the registered optician who will assume the operation of the Member's store(s).
4. The Member is required to pay the College a portion of its costs in this matter in the amount of \$9,000 within thirty six (36) months of the date of this order.

### **Reasons for Penalty Decision**

The panel once finding that the member was guilty of professional misconduct pursuant to the allegations set forth in the notice of hearing, Section 4, Section 9.1 and 9.3 of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, and section 1 of Ontario Regulation 828/93 under the *Opticianry Act, 1991*, S.O. 1991, c.34, then moved on to consider what would be an appropriate penalty that would address the severity of the member's offences, bearing in mind that any penalty must address the violation of the College's mandate to protect the public, and it must also address the factors of rehabilitation, remediation and specific and general deterrence. Having considered the above factors the panel found that the penalty terms as set forth above were appropriate in this instance and that these terms addressed all the specific factors needed to be considered when forming an appropriate penalty.

### **COSTS**

#### **Evidence and Submissions of the Parties on Costs**

The College requested that the panel make an order that the Member be required to pay the College costs in this matter in the amount of \$11,000.

The counsel for the college provided a breakdown on costs of the prosecution to bring this matter to a hearing as well as the lack of cooperation by the member to attempt to mitigate those costs. Counsel submitted that costs are not meant to be a sanction, but that it was not fair for the members of the College to pay the full brunt of the costs of a discipline hearing. The College submitted that this was an appropriate case for costs, given the seriousness of the misconduct.

The member indicated that in light of his financial circumstances, and in light of the suspension, he would not be in a position to pay the costs requested by the College.

#### **Costs Decision**

The panel deliberated and decided to make the following order:

The Member is required to pay the College a portion of its costs in this matter in the amount of \$9,000 within thirty six (36) months of the date of this order.

#### **Reasons for Costs Decision**

The panel reviewed the costs evidence put forth by the College and from the member on costs. Taking into consideration the member's current status with the College and financial status and consideration of the need to show the consequences for causing the necessity for requiring the use of resources to be expended unnecessarily in the bringing a matter to resolution, the panel found that the costs order was appropriate.

I, **David Milne**, 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:



November 20, 2015

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David Milne, Chairperson and  
Public Member

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Date

Rob Vezina, Professional Member  
Ingrid Koenig, Professional Member  
Bryan Todd, Professional Member  
Eve Hoch, Public Member