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

Panel: Mr. Marvin Ross, Chair, Public Member
Ms. Peggy Dreyer, Appointed Optician Member
Mr. Robert Vezina, Elected Optician Member

Between

College of Opticians of Ontario

Mr. Antonio Di Domenico, Counsel for the College
Ms. Caitlin Fell

and

Mr. John Ross Eikeland, C-409

Mr. Stephen Labow, Counsel for the Member

Ms. Luisa Ritacca, Independent Legal Counsel

June 19, 2009

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on June 19, 2009 at the College of Opticians of Ontario in Toronto.

The Allegations

It is alleged that John Ross Eikeland (the "Member") has committed acts of professional misconduct as defined in s 5 of the *Opticianry Act*, S.O. 1991, c.34 (the "Act") and as defined in section 1, paragraphs 2, 26, 28 and 29 of Ontario Regulation 828/93, as amended, promulgated pursuant to the Act, in that he:

- (a) contravened a standard of practice of the profession;
- (b) contravened the Regulated Health Professions Act, 1991, by engaging in the controlled act of prescribing eyeglasses for vision or eye problems without being a member authorized by a health profession Act to perform the controlled act;
- (c) dispensed eyeglasses without a prescription of an optometrist or a physician;

- (d) engaged in conduct or performed 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; and
- (e) advertised or permitted advertising with respect to your practice, in contravention of the regulations.

The particulars of these allegations were agreed to by both the College and the member. The Member admitted to the facts as set out in the Agreed Statement of Facts filed as Exhibit #2 and the panel was satisfied that the admission was voluntary and informed.

Agreed Statement of Facts:

1. John Ross Eikeland ("**Mr. Eikeland**") is a member of the College of Opticians of Ontario. His membership number is C-409.
2. Mr. Eikeland is not a member of the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario.
3. Mr. Eikeland is the owner and operator of Aurora Optical Inc., 265 Edward Street, Aurora, Ontario L4G 3M7 ("**Aurora Optical**").

Andrew Czerwinski

4. On February 24, 2006, the patient, Mr. Andrew Czerwinski ("**Mr. Czerwinski**") attended Aurora Optical.
5. Mr. Czerwinski did not have a prescription from a physician or an optometrist, nor did he have a pair of old eyeglasses when he entered Aurora Optical.
6. Mr. Czerwinski advised Mr. Eikeland that he wanted to purchase one (1) pair of prescription eyeglasses and one (1) pair of prescription sunglasses from Aurora Optical. Mr. Czerwinski also advised Mr. Eikeland that he required an eye examination and a prescription because he could no longer see clearly through his own eyeglasses.
7. Mr. Eikeland advised Mr. Czerwinski that he could conduct an eye examination on Mr. Czerwinski and provide him with a prescription using the results from that eye examination.
8. Mr. Eikeland then performed an eye examination on Mr. Czerwinski, which included the performance of refractometry.
9. Mr. Eikeland reviewed the results from the refraction test performed by him and used the results to determine a prescription for Mr. Czerwinski. Mr. Eikeland provided Mr. Czerwinski with a document that purported to be a prescription for eyeglasses with the name of a physician on the top, Dr. A.R. Sebastian. A copy of this document is attached hereto under tab 1.
10. Dr. A.R. Sebastian was not present at Aurora Optical on February 24, 2006. Mr. Czerwinski is not a patient of Dr. A.R. Sebastian, he has never been examined by Dr. A.R. Sebastian, and has never met Dr. A.R. Sebastian.

11. Mr. Eikeland then assisted Mr. Czerwinski in purchasing one (1) pair of eyeglasses, which were not simple magnifiers and one (1) pair of sunglasses, which were not simple magnifiers.
12. On March 25, 2006, Mr. Czerwinski returned to Aurora Optical to purchase and pick up the eyeglasses and sunglasses that he had ordered on February 24, 2006.
13. On March 25, 2006, Mr. Eikeland then dispensed eyeglasses and sunglasses that were not simple magnifiers to Mr. Czerwinski without a prescription from a physician or optometrist. Mr. Eikeland dispensed eyeglasses and sunglasses to Mr. Czerwinski on the basis of the results of the refraction test he performed on Mr. Czerwinski.
14. Mr. Czerwinski then paid \$400.00 to Mr. Eikeland in exchange for the eyeglasses and sunglasses. Mr. Eikeland then provided Mr. Czerwinski with a receipt. A copy of the receipt for this purchase is attached hereto under tab 2.
15. Mr. Eikeland misled Mr. Czerwinski into believing that he was authorized to perform refractometry and prescribe eyeglasses by engaging in the aforementioned conduct and failing to inform Mr. Czerwinski that he was not authorized to do so.

Michael Hayes

16. On November 21, 2006, the patient, Mr. Michael Hayes (“**Mr. Hayes**”) attended Aurora Optical. Mr. Hayes advised Mr. Eikeland that he required an eye examination because he had run out of eyeglasses that suit his vision.
17. Mr. Eikeland advised Mr. Hayes that he could conduct an eye examination on him. Mr. Hayes and Mr. Eikeland scheduled an eye examination at Aurora Optical for November 24, 2006.
18. On November 24, 2006, Mr. Hayes returned to Aurora Optical for his scheduled eye examination.
19. Mr. Eikeland performed an eye examination on Mr. Hayes, which included the performance of refractometry. Following the eye examination, Mr. Hayes ordered lenses, frames and coating from Aurora Optical. Mr. Hayes paid a \$200.00 deposit on his purchase that totalled \$460.00. A copy of the receipt for this purchase is attached hereto under tab 3.
20. On December 4, 2006, Mr. Hayes returned to Aurora Optical to pick up the eyeglasses, which were not simple magnifiers that he had ordered on November 24, 2006.
21. Mr. Eikeland dispensed eyeglasses that were not simple magnifiers to Mr. Hayes without a prescription from a physician or optometrist. Mr. Eikeland dispensed eyeglasses to Mr. Hayes on the basis of the refraction test that Mr. Eikeland performed on Mr. Hayes on November 24, 2006. Mr. Eikeland wrote numbers on the back of a business card that he purported were Mr. Hayes' "prescription", and he provided that business card to Mr. Hayes. A copy of the business card showing the numbers that Mr. Eikeland wrote is attached hereto under tab 4.
22. Hayes paid Eikeland \$260.00, the remainder of his outstanding bill.
23. On March 9, 2001, the Council for the College passed a resolution (the “**Resolution**”) that prohibited members of the College from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians have been developed and adopted. No such standards were in place on or about February 24, 2006, March

25, 2006, November 24, 2006 or December 4, 2006. The Resolution also prohibited members of the College from using the results of refractometry test to alter a prescription. The content of the Resolution was disseminated to the members of the College of Opticians in an Optical Bulletin on March 14, 2001. A copy of the Optical Bulletin containing the Resolution is attached at tab 5. The Resolution was still in force on February 24, 2006, March 25, 2006, November 21, 2006, November 24, 2006 and December 4, 2006.

24. Mr. Eikeland was aware of the Resolution, and further, he knew that the Resolution was still in force at the time he engaged in the conduct at issue in this matter.

ADMISSION

25. Mr. Eikeland admits that the conduct set out above constitutes professional misconduct contrary to:

- (a) section 5 of the *Opticianry Act, 1991*, S.O. 1991, c.34, in that he dispensed eyeglasses without the prescription of an optometrist or a physician, having used the results of a refraction test to prepare and dispense eyeglasses;

and contrary to

- (b) section 1, paragraph 26 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act, 1991* in that he contravened section 5 of the *Opticianry Act, 1991* by dispensing eyeglasses without a prescription from an optometrist or a physician;

and contrary to

- (c) section 1, paragraph 28 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act, 1991* in that he engaged in conduct in the course of practising opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional, namely:

- (i) he dispensed prescription eyeglasses without the prescription of an optometrist or a physician;
- (ii) he contravened the prohibition against performing refraction set out in the Resolution;
- (iii) he used the results of a refraction test to alter a prescription in violation of the Resolution; and
- (iv) he intended to mislead Mr. Czerwinski and Mr. Hayes into believing they were receiving eyeglasses pursuant to a valid prescription when, in fact, they were not.

26. Mr. Eikeland certifies that prior to signing this statement of agreed facts, Mr. Eikeland sought and obtained independent legal advice. Mr. Eikeland understands the contents of this document and that through this document he is admitting that he committed professional misconduct. He also understands the consequences that can flow from a finding by the Discipline Committee of the College that he committed professional misconduct.

DECISION

Based on the facts set out in the Agreement Statement of Facts and the Member's admission, the panel finds that Mr. Eikeland engaged in conduct that amounts to professional misconduct, as alleged in the Notice of Hearing.

THE DISPOSITION

The College advised the panel that a joint consent disposition as to penalty had been agreed upon. Mr. Eikeland stated that he was in agreement with the consent disposition. The parties jointly submitted the following:

27. The parties agree to dispose of this matter in the following way:
- (a) Mr. Eikeland has signed an undertaking in the following terms:
 - (i) At all times, he will perform refractions in full compliance with the requirements set out by the College of Opticians of Ontario (the "College") in the new Standard of Practice for Refraction passed by Council on September 25, 2007 (the "Refraction Standard"); and
 - (ii) he acknowledges that any breach of this undertaking will constitute professional misconduct.
 - (b) The parties consent to the disposition of this proceeding by an Order of the Discipline Panel in the form attached hereto, which contains the following terms:
 - (i) Mr. Eikeland shall appear before the panel to be reprimanded, and the fact of the reprimand shall be recorded in the Register;
 - (ii) Mr. Eikeland's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on the date of this Order;
 - (iii) the Panel shall direct the Registrar to place the following specified term condition or limitation on Mr. Eikeland's certificate of registration for a period of two years commencing from the date of this Order:
 - a. the College may, without notice, conduct random inspections of Mr. Eikeland's practice for a period of two (2) years commencing on the date of the order. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of four (4) over the two (2) year period. Mr. Eikeland must pay to the College, within fifteen (15) days of each inspection, costs in respect of the inspection, to a maximum of \$500 per inspection. Mr. Eikeland will cooperate with the random inspections and instruct his employees to do the same.
 - (iv) Pursuant to section 53.1 of the *Health Professions Procedural Code*, Mr. Eikeland shall pay part of the costs of the College of Opticians of Ontario in the amount of \$4,000. The costs can be paid over a period of twenty (20) months at a rate of \$200 per month. The payments will be made by way of twenty (20) preauthorized debits from a credit card to be specified by Mr. Eikeland in the amount of \$200 each, payable on the 15th day of each month, to commence immediately after date of the Order, until final payment is rendered.

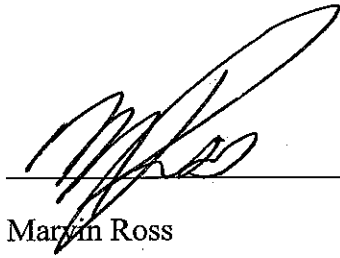
If any debit to Mr. Eikeland's credit card cannot be processed on the payment date, the total amount remaining outstanding shall be due and payable forthwith.

Mr. Eikeland agreed to waive his right of appeal and the panel reprimanded him.

REASONS FOR DISPOSITION

The panel concluded that the disposition agreed upon by parties was fair, adequately reflected the severity of the offense and was in keeping with dispositions previously agreed upon in similar circumstances. Joint proposals on disposition are only departed from when it would be unjust for a panel to do so. We decided to accept this agreed upon disposition because the proposal would not result in an unjust decision. As a result, the panel makes its order in accordance with the penalties set out in the joint proposal.

I, Marvin Ross, chairperson, sign these reasons on behalf of the panel members listed above.



Marvin Ross