

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

PANEL:

Robert Vezina, Chairperson
Ed Viveiros, Member
John Battaglia, Member
Susan Carlyle, Public Member
Eve Hoch, Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<i>Rebecca Durcan</i> for
)	College of Opticians of Ontario
- and -)	
)	
ZIAOLLAH ALASTI-FARIDANI)	<i>(Self-represented)</i>
REGISTRATION #C-2136)	Ziaollah Alasti-Faridani
)	
)	
)	<i>Luisa Ritacca</i>
)	Independent Legal Counsel
)	
)	
)	Heard: January 19, 2015, April 20, 2015

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on January 19, 2015 at Victory Verbatim at Toronto. As a result of a medical emergency suffered by the Member, the matter was adjourned and completed on April 20, 2015.

At the end of the liability phase of the hearing, the panel deliberated and returned with a finding that the Member engaged in professional misconduct as set out in the Notice of Hearing (discussed below). The panel's reasons and decision on penalty are set out below.

The Allegations

The allegations against Mr. Alasti-Faridani (the "Member") as stated in the Notice of Hearing dated May 29, 2014 are as follows:

1. At all material times, Ziaollah Alasti-Faridani (the "Member") was a registered optician in Ontario.
2. On or about April 29, 2010, the Member was found guilty for failing to comply with a recognizance and of criminal harassment against Person 1.
3. On or about November 30, 2010, the Member was found guilty of criminal harassment against Person 2.
4. *Withdrawn.*
5. *Withdrawn.*
6. Section 7 - "Conduct" of the College's "Optician Renewal Application Form 2012" required the Member to truthfully respond to the following question:
 - 7b. Have you been found guilty of a criminal offense that has not been previously reported to the College?
7. It is alleged that the Member filed his 2012 renewal application on or about December 30, 2011 and answered "No" to this question.
8. Section 7 - "Conduct" of the College's "Optician Renewal Application Form 2013" required the Member to truthfully respond to the following question:
 - 7b. Have you been found guilty of a criminal offense that has not been previously reported to the College?
9. It is alleged that the Member filed his 2013 renewal application on or about January 3, 2013 and answered "No" to this question
10. 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. *Withdrawn;*
 - b. He contravened a standard of the profession (paragraph 2);
 - c. 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

- 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).

11. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to the Member in support of the allegations in the Notice of Hearing.

Member's Plea

The Member denied the allegations as set out in the Notice of Hearing.

The Evidence and Position of the Parties

The College submitted as evidence a number of certified copies of court documents confirming that the Member was found guilty of three criminal offences in or about 2010, all relating to domestic issues arising out of his relationship with his former spouse and their son. While before this panel the Member continued to deny the underlying facts giving rise to these convictions, he did not take issue with the veracity of the court documents or the fact of his convictions.

With the consent of the Member, the College filed copies of the Member's Optician Renewal Application Form for 2012 and 2013. The College noted that under Section 7, where the Member is asked: "Have you been found guilty of a criminal offence that has not been previously reported to the College", the Member answered "NO" on both forms. The College also directed the panel to section 9 of the forms, entitled "Authorization and Declaration". That section provides in part that by signing the form, the Member, "certify that the statements made by me on this application are true and complete to the best of his knowledge and belief. I understand that a false or misleading statement may disqualify me from renewal of my certificate of registration or may be cause for revocation of any registration, which has been granted to me".

The Member completed and signed section 9 on both the 2012 and 2013 renewal forms. Again, the Member did not challenge the veracity or accuracy of the documents as filed.

The College submitted that on the basis of the certified court documents confirming the Member's 2010 convictions and the 2012 and 2013 Optician Renewal Application Form, it was clear that the Member engaged in professional misconduct as alleged in the Notice of Hearing. The Member has an obligation to act honestly and with integrity, particularly when responding to inquiries by his College. Whether through inadvertence or deliberately, the Member failed to advise the College of his 2010 convictions, as he is required to do.

The College further submitted that the Member's decision not to report his convictions would in all circumstances reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Member filed two character references, as well as a copy of a court decision from 2008 wherein he was acquitted of charges brought by his former spouse. The Member maintained that he did not believe he was required to report the 2010 convictions because they were not related to his practise as an optician. He stated that the matter was personal and that he had never put the public or his clients in danger. He also noted that between the 2011 renewal forms and the 2012 form there had been a change in the questions asked, which he had not noticed.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities and based upon clear, cogent and convincing evidence.

As announced during the hearing, the panel considered the evidence filed and the parties' submissions. The panel was satisfied that the Member committed acts of professional misconduct as alleged in paragraphs 10 (b)-(d) of the Notice of Hearing.

Reasons for Decision

The unchallenged documentary evidence filed by the College clearly established that (i) the Member was been found guilty of certain criminal offences in 2010 and (ii) the Member failed to answer truthfully with respect to those convictions on his 2012 and 2013 Optician Renewal Application forms.

The Member did not deny that he failed to advise the College of his criminal convictions on his renewal forms. His argument that the convictions were unrelated to his professional practise was not persuasive. Members are required to provide truthful and fulsome information to the College and particularly on their renewal forms. It was not up to the Member to decide whether the criminal convictions were relevant or not. The question on the renewal form is clear: the College requires its members to advise of any criminal conviction and not simple those which may be relevant to practise. The panel

concluded that by providing false information in response to the questions at sections 7 and 9 of the renewal forms, the Member engaged in conduct that would reasonably be regarded by other members of the profession as disgraceful, dishonourable and unprofessional..

Penalty Submissions

The College filed a written submission on penalty to assist the panel. In its submission, the College sought the following order:

- a. The Member shall be required to appear before a panel to be reprimanded within 30 (thirty) days of the date of this Order;
- b. The Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for 4 (four) months, to commence on a date to be set by the Registrar;
- c. The Registrar will suspend 1 (one) month of the suspension ordered in paragraph (b) if the Member successfully, in the opinion of the Registrar, completes the requirement set out in paragraph (d) of this order within 6 (six) months of the date of this order. In any event, the Member must complete the requirement set out in paragraph (d) of this order within 1 (one) year of the date of this Order.
- d. The Discipline Committee shall direct the Registrar to impose specified terms, conditions and limitations on the Member's certificate of registration requiring him:
 - i. To successfully complete, in the opinion of the Registrar, the Professional/Problem-Based Ethics Course ("ProBE") offered by The Center For Professionalized Education for Physicians, the cost of which will be borne by the Member.

The College argued that the penalty proposed satisfied the principles of denunciation, general and specific deterrence. The College submitted that the requirement to complete the ProBE course offered the Member an opportunity for remediation and added an additional layer of public protection.

In support of its position, the College provided the panel with three prior cases. In two of the three cases, which involved nurses in Ontario, the members were found to have engaged in professional misconduct for failing to advise their college of a prior criminal conviction and were found guilty of misconduct given that the offence at issue was related to their suitability to practice.

In response to the College's proposed penalty, the Member argued that no penalty and in particular, no suspension should be ordered. The Member reiterated that the 2010 convictions were totally unrelated to his professional life and as such, it would be inappropriate for the panel to impose a penalty at this stage.

Penalty Decision

The panel makes the following order as to penalty:

- a. The Member shall be required to appear before a panel to be reprimanded within 30 (thirty) days of the date of the release of this Decision;
- b. The Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for 12 (twelve) weeks, to commence on a date to be set by the Registrar;
- c. The Registrar shall suspend 10 (ten) weeks of the suspension ordered in paragraph (b) if the Member successfully, in the opinion of the Registrar, completes the requirement set out in paragraph (d) of this order within 6 (six) months of the date of this order. If the Member completes this requirement, the Registrar shall determine when the two week suspension shall occur. In any event, the Member must complete the requirement set out in paragraph (d) of this order within 1 (one) year of the date of this Order.
- d. The Discipline Committee shall direct the Registrar to impose specified terms, conditions and limitations on the Member's certificate of registration requiring him:
 - i. To successfully complete, in the opinion of the Registrar, an Ethics Course, the cost of which will be borne by the Member. The costs of such course shall not exceed \$2,000.00 (two thousand) dollars.

Reasons for Penalty Decision

As alluded to above, the College provided the panel with a Penalty Brief, which included three prior cases. The panel considered these cases – both how they were similar to and different from the present circumstances. At the request of the Member and without opposition by the College, the panel was provided with an earlier penalty proposal that had been exchanged between the parties. While the panel is most often not privy to such prehearing documents, the parties were content that the panel receive this one. In it, the

College indicated that it would seek a much reduced penalty, if the Member were prepared to admit the allegations.

Taking into the prior cases and the submission of the parties, the panel concluded that the penalty ordered adequately meets the need for specific and general deterrence, and also offers the Member an opportunity to learn from his mistake. While the panel recognizes that its order is less restrictive than that proposed by the College, it has concluded that the penalty is most appropriate.

The Panel heard from the Member about how the financial burden proposed by the College was too high for him. He pleaded that the original offer from the College was significantly lower. The Panel heard that the Member was in good standing and the College stated that his ability to interact professionally with the public was never in question. In view of these facts the panel felt that the penalty proposed by the College was too onerous.

Costs

The College filed a bill of costs in excess of \$22,000.00, which was illustrative of only part of the costs associated with the investigation and prosecution of this matter. It sought \$5000.00 in costs from the Member.

The Member argued that he is simply not in a position to pay any costs to the College and that if he is ordered to do so he may have to resign from the profession.

The panel considered the parties' submissions with respect to cost and concluded that costs were appropriate in the circumstances. The panel makes the following order:

- a. The Member shall pay costs to the College in the amount of \$4,000.00 (four thousand dollars) . The amount shall be payable in 2 instalments, as follows:
 - i. The first instalment of \$2,000.00 (two thousand dollars) is payable within 12-months of the date of the release of this Decision; and
 - ii. The second instalment of \$2,000.00 (two thousand dollars) is payable within 6-months after payment of the first instalment.

I, *Robert Vezina*, 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:



May 8, 2015

Robert Vezina, Chairperson

Date

Ed Viveiros, Member
John Battaglia, Member
Susan Carlyle, Public Member
Eve Hoch, Public Member