

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

PANEL:

Parminder Dhillon (Chair, Elected Member)
Bryan Todd (Elected Member)
Peggy Dreyer (Appointed Non-Council Member)
Eve Hoch (Public Member)
Puttaveeraiah Prabhakara (Public Member)

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)
) (ROBERT COSMAN AND NADIA JANDALI)
) for the College of Opticians of Ontario
)
- and -)
) Self represented
(Bruce Bergez RO)
REGISTRATION c-1192#)
)
) LUISA RITTACA AND BRIAN GOVER
) Independent Legal Counsel
)
)
) Heard: *February 23 and 24, 2010*

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on February 23 and 24, 2010 at the College of Opticians of Ontario ("the College") at Toronto.

The Allegations

The allegations against Mr Bruce Bergez (the "Member") as stated in the Notice of Hearing dated December 5, 2006 are as follows:

IT IS ALLEGED that you have committed acts of professional misconduct as defined in subsection 51(1)(a) of the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18 and as defined in section 1, paragraphs 1, 2, 5, 26, 27, 28 and 29 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34 (the "Act"), in that, on or about June 24, 2003 – through October 26, 2006, you:

- (a) Permitted, counseled or assisted persons who are not registered under the Act to perform an act that should be performed by a member, namely, prescribing and/or dispensing for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers;
- (b) Were found guilty of contravening section 42(1) of the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18 for being the employer of a person who performed the controlled act of dispensing eyeglasses for vision or eye problems without being a person authorized to do so, which contravention is relevant to your suitability to practice;
- (b.1) Were found in contempt of the Judgement of the Honourable Justice Harris dated June 24, 2003 by the Judgement of the Honourable Justice Crane of the Ontario Superior Court of Justice dated November 24, 2006;
- (c) Contravened a standard of practice of the profession;
- (d) Contravened a term, condition or limitation imposed on your certificate of registration;
- (d.1) Advertised or permitted advertising with respect to your practice in contravention of the regulations; and
- (e) Engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

THE PARTICULARS of these allegations are:

- (i) Between June 24, 2003 and October 26, 2006, you permitted, counseled and assisted persons at 17 Great Glasses stores to prescribe and dispense eyeglasses and contact lenses for vision or eye problems even though those persons were not authorized to do so;
- (ii) On or about January 21, 2005, you were found guilty and convicted of contravening section 42(1) of the *Regulated Health Professions Act*, 1991, c. 18 for being the employer of a person, Mandy Caravan, who, while acting in the scope of her employment and while providing healthcare services to a member of the public, performed the controlled act of dispensing eyeglasses for vision or eye problems without being a person

authorized to do so, which contravention is relevant to your suitability to practice;

- (ii.1) On or about November 24, 2006, you were found in contempt of the Judgement of the Honourable Justice Harris dated June 24, 2003 by the Judgement of the Honourable Justice Crane of the Ontario Superior Court of Justice dated November 24, 2006, who found that, from June 24, 2003 through October 26, 2006, you failed to comply with the *Regulated Health Professions Act, 1991, S.O., c. 18* and the *Health Professions Procedural Code* which is Schedule 2 thereto and that you failed to ensure that employees under your control and direction so complied in that they engaged in prescribing and/or dispensing at optical dispensaries operating under the name "Great Glasses" in breach of the *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*, and the *Health Professions Procedural Code* which is Schedule 2 thereto;
- (ii.2) Between June 24, 2003 and October 26, 2006, you advertised or permitted advertising with respect to your practice that was false or misleading in that you advertised or permitted advertising of the provision of free "eye examinations" when only sight tests to calculate refractive error were actually being administered and that you advertised or permitted advertising that eye examinations were being legally offered by you and other persons working under your authority when you and those other persons were not legally permitted to perform eye examinations.
- (iii) Between June 24, 2003 and October 26, 2006, you failed to maintain patient records in accordance with the Standards of Practice dated September 24, 1994 thus engaging in conduct that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional; and
- (iv) On or about October 14, 2005, you refused to allow inspectors appointed by the College of Opticians to inspect your business premises, contrary to a term condition and limitation placed on your certificate of registration.

Member's Plea

Mr. Bruce Bergez denied the allegations set out in the Amended Notice of Hearing.

Overview

Mr. Bergez is an optician, whose certificate of registration with the College of Opticians of Ontario was suspended by Interim Order of the Registrar, as directed by the Executive Committee on November 16, 2006. Mr. Bergez' certificate was revoked by order of the discipline panel on February 12, 2010. .

Mr. Bergez operates a chain of optical stores known as Great Glasses 3 for 1 ("Great Glasses"). Great Glasses offers free eye examinations and three pairs of eyeglasses for the price of one. Other than the period between February 2003 to September 2003 (Michael Piekney) and 10 months in 2003 (Arthur Kochberg), Mr. Bergez was the only optician who registered Great Glasses as his practice between 2003 and 2006.

Although Mr. Bergez' license has been revoked, he is still responsible for his actions. Pursuant to section 14 of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act 1991*, S.O. 1991, c. 18 (the "Code"), this panel has the jurisdiction to inquire into and make determinations with respect to Mr. Bergez' conduct, regardless of the current status of his certificate.

The Notice of Hearing sets out the particulars with respect to alleged acts of professional misconduct, which took place between June 24, 2003 and Oct 26, 2006.

The panel heard evidence from two (2) witnesses and considered evidence from eight (8) exhibits.

The Evidence

The College's first witness was Wayne William Moore, an investigator with Northwest Protection Services. Mr. Moore confirmed that he was retained by the College on October 11, 2005 to conduct an investigation with respect to Mr. Bergez and to, in particular, carry out his investigation at three (3) Great Glasses stores in Hamilton and Burlington. Mr. Moore testified that he undertook this investigation on October 14, 2005. As part of his evidence, the following documents from Exhibit 2 were referred to:

- (1) Brief of Documents (tab 11, page 99): Copy of Investigator Contract
 - a. Mr Moore confirmed this as a copy of his retainer to investigate allegations against Mr Bergez
- (2) Brief of Documents (tab 11, page 100): Schedule A
 - a. Mr Moore confirmed this document contained the instructions to be used in addition to investigative procedures
- (3) Brief of Documents (tab 11, page 101): Appointment of Investigator
 - a. Mr Moore confirmed this document to be the appointment letter hiring him as the investigator
- (4) Brief of Documents (tab 14, page 108): Investigative Report

- a. Mr Moore confirmed this to be the report prepared by himself in regards to his investigation into the matter
- (5) Brief of Documents (tab 15, page 112): Trespass letter to Mr Moore
- a. Mr Moore confirmed this to be a letter he received from Mr Bergez after his investigation

In testimony, Mr. Moore confirmed the information he had earlier provided to the College in his Investigative Report, dated October 15, 2005 (Exhibit 2, tab 14). In particular, he confirmed the following:

- On October 14, 2005, Mr. Moore and Diane Nicholas (a College employee) attended the Great Glasses stores at 50 Dundurn St. S. and 1550 Upper James in Hamilton, and 1025 Plains Road E. in Burlington;
- At the 50 Dundurn location, Mr. Moore spoke with Mr. Bergez, who advised Mr Moore that had no authority to search records at that location as per the order from the College of Opticians of Ontario as he did not own the store and did not dispense eyeglasses from this location.
- Mr. Bergez advised Mr. Moore that the records for the store were not stored at that location and refused to advise where the records were secured.
- Mr. Moore was not provided with access to any health records at any of the Great Glasses locations.

On October 15, 2005 (tab 15, Exhibit 2), Mr. Moore received a Trespass letter from Bruce Bergez. This letter purported to prohibit Northwest Protection Services, Mr. Moore's agency, and its agents from entering properties of Great Glasses locations pursuant to the *Trespass to Property Act*.

The College's second witness was Caroline MacIssac-Power, the Registrar of the College of Opticians of Ontario. As part of her evidence, the following documents in Exhibit 2 were referred to:

- (1) Brief of Documents (tab 4, page 59 and 60): Renewal Application 2003
- (2) Brief of Documents (tab 8, page 93 and 94): Renewal Application 2004
- (3) Brief of Documents (tab 9, page 95 and 96): Renewal Application 2005
- (4) Brief of Documents (tab 10, page 97 and 98): Renewal Application 2006
- (5) Brief of Documents (tab 7, page 90 to 92): D&R Discipline Panel Oct 21, 2003
- (6) Brief of Documents (tab 11, page 101): Instructions to Investigator
- (7) Brief of Documents (tab 12, page 102 and 104): Notice of Inspection
- (8) Brief of Documents (tab 13, page 105 and 106): Mr Bergez's Reply to Inspection
- (9) Brief of Documents (tab 15: page 112): Trespass letter
- (10) Brief of Documents (tab 14, page 1108 to 111): Investigative Report
- (11) Brief of Documents (tab 3): Standards of Practice.

Ms. Power confirmed that Mr Bergez was first registered with the College of Opticians in 1991. She also reviewed Mr. Bergez's renewal forms for 2003 to 2006, as found in Exhibit 2. This evidence is contrary to what Mr Bergez told the investigator during the investigation

member of the College of Opticians of Ontario as required by the RHPA and was not authorized to perform these controlled acts. The panel also reviewed the affidavit of Michael Piekny wherein Mr. Piekny confirmed that non-optician employees took measurements, fabricated glasses, fitted and dispensed to the customer in his experience at Great Glasses stores. Further, in Justice Crane's decision of November 24, 2006 he states that "I find that those persons engaged in prescribing and/or dispensing at each Great Glasses store – 17 or more stores – are doing so unlawfully, in breach of the Regulated Health Professions Act". Pursuant to section 51(1)(a) of the Code, a panel shall find a member has committed an act of professional misconduct if the member has been found guilty of an offence that is relevant to the member's suitability to practice. The court found Mr Bergez guilty under the *RHPA* and the *Provincial Offences Act*; as such, Mr. Bergez is guilty of professional misconduct as set out in section 51(1)(a).

Although Mr Bergez states that he was not the owner of Great Glasses, Justice Crane concluded in his judgment of November 24, 2006 that "Bruce Bergez is the directing mind and ultimate owner of the undertaking trading under the name Great Glasses". On his application for renewal of his certificate of registration, Mr. Bergez listed two Great Glasses locations - 1550 Upper James Road and 1025 Perkins Road - as practice locations and on his renewal forms for 2004, 2005, 2006, Mr. Bergez listed "all current and future Great Glasses locations" as his practice locations. In addition, the affidavit of Michael Piekny refers to Mr Bergez as the owner of the business. Most compelling is the ruling of William Danbrook (Justice of the Peace) on January 21, 2005. The member was found to be the employer of Mandy Caravan, a person who while acting in the scope of her employment and in the course of providing health care services to an individual, performed the controlled act of dispensing eye glasses for vision or eye problems without being a member authorized to perform these controlled acts.

Mr. Bergez was found in contempt of Justice Harris's June 24, 2003 decision by Justice Crane on November 24, 2006. He failed to ensure that employees under his control and direction complied with the order of Justice Harris. There was a breach of the RHPA and the Health Professions Procedural Code. Furthermore, a finding of guilt of contempt constitutes a common law offense amounting to professional misconduct. Again, the burden of proof has been met in the courts prior to this hearing.

The Guidelines for Professional Standards of Practice dated September 21, 1994 by the College of Opticians of Ontario, clearly state "patient files must be neatly organized and maintained in the dispensary for a minimum of six years from the date of last entry". During the inspection conducted by Wayne Moore on October 14, 2005, Bruce Bergez informed the inspector that patient records were not in the store and refused to disclose where the records were. He argued that since the inspection was limited to his own practice and that since he was not the owner of Great Glasses, the records were not under his control, and as such the inspector could not view these records. Contrary to Mr. Bergez' position, the Ontario courts (both the Superior Court and the Court of Appeal) have concluded that "Bruce Bergez is the directing mind and ultimate owner of the undertaking trading under the name Great Glasses". This panel therefore concludes

that these records did belong to Bruce Bergez and he failed to keep the records in the dispensary, as alleged in the Notice of Hearing at (e).

The order of a panel of the Discipline Committee of the College dated October 21, 2003 directed the Registrar to impose a condition and limitation on the Certificate of Registration of Mr. Bergez for a period of 2 years starting October 21, 2003. The condition and limitations allowed for the College of Opticians to conduct random inspections of member's health records at any premises where Mr. Bergez carries on practice of opticianry to ensure that he is not dispensing eyewear without the prescription of an authorized prescriber. Mr. Bergez agreed to co-operate with the random inspections and instruct his employees and/or employees of the premises wherein the member's health records are located to comply with the inspection.

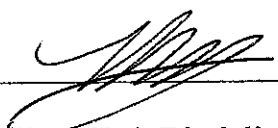
During the inspection of October 14, 2005, Mr Bergez refused to allow Mr. Moore, the investigator retained by the College to inspect the records, on the basis that the records were not *his* health records. . The assertion that he was not the owner of the store and that as such he could not be forced to produce the health records contained therein was disingenuous. The argument has no valid basis in light of the unequivocal Court ruling of Justice Crane that "Bruce Bergez is the directing mind and ultimate owner of the undertaking trading under the name Great Glasses". The order from the College also required Mr. Bergez to instruct his employees to co-operate with any inspections. However, during the inspection of October 14, 2005, two employees of the Great Glasses store on 50 Dundurn Street, Jim Blair and Chelsea Pratt were not allowed to answer a question in regards to their positions at Great Glasses by Mr Bergez. Not only did Mr Bergez not provide the records needed to investigate compliance from Mr Bergez, he hindered the investigation by not allowing the employees to answer questions asked by Mr Moore that day. Not complying with an order contravenes the professional misconduct regulation as well as sections 76(3) and 93(2) of the Code and we therefore find Mr Bergez guilty of professional misconduct in this respect.

According to Justice Crane's decision of November 24, 2006, Mr Bergez is aware of the definition of an eye examination as defined in the *Optometry Act*. And yet he still went on to advertise "Free Eye Examinations" and continued to deceive the public in doing so. This is a contravention of the regulations and Mr Bergez is responsible for the professional misconduct committed here.

Mr. Bergez exhibits a total disregard for public safety and the right to acceptable eye health care as dictated by mandated regulations and professional integrity. He has a responsibility as a member of a health care body to assure correct procedures are followed. He has failed on all counts.

The repeated offenses by Bruce Bergez between June 24, 2003 and October 26, 2006 shows a blatant disregard and disrespect for the public of Ontario as a health care provider and all laws governing opticians in the province of Ontario. This panel finds the conduct of Mr Bergez disgraceful, dishonourable and highly unprofessional.

I, Parminder Dhillon, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Parminder Dhillon, Chair Discipline Panel

Aug 1 / 2010

Date

Peggy Dreyer

Eve Hoch

Puttaveeraiah Prabhakara

Bryan Todd