

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

PANEL: Fazal Khan, Chair
 Gloria Baltazar
 Derick Summers
 Librado Ibe Jr.
 Marilyn Fron

IN THE MATTER OF a complaint regarding the conduct of Bruce Bergez, a member of the College of Opticians of Ontario.

BETWEEN:)	
)	
COLLEGE OF OPTICIANS)	Robert Cosman and Nadia Jandali
OF ONTARIO)	for the College of Opticians of Ontario
)	
- and -)	
)	
)	Bruce Bergez, in person
)	
BRUCE BERGEZ, C-1192)	
)	
)	
)	Christopher Wirth, Independent
)	Legal Counsel
)	
)	Heard: January 14, 2010
)	

DECISION AND REASONS

This matter came on for hearing with respect to the issue of penalty before a panel of the Discipline Committee of the College of Opticians of Ontario (the "College") on January 14, 2010 at Toronto, as a result of the panel's Decision and Reasons dated November 11, 2009 finding Bruce Bergez ("Bergez") guilty of professional misconduct.

Penalty

The Panel heard from Counsel for the College of Opticians of Ontario who requested that Mr. Bergez's Certificate of Registration be revoked and submitted that revocation of Certificates of Registration have been supported in the Courts in situations where the member is 'ungovernable'.

Counsel for the College argued that the penalty must be proportionate to the conduct and that the circumstances surrounding the proceedings against Mr. Bergez were indeed extraordinary and serious.

Counsel for the College also presented information that Mr. Bergez had in fact appeared in front of a prior Panel of the Discipline Committee of the College in 2003. In a joint submission Mr. Bergez plead guilty to dispensing eyewear without a valid prescription contrary to the Opticianry Act. He was reprimanded, fined and had his Certificate of Registration suspended for a period of time with limitations placed on his certificate by the Registrar.

Subsequent to his appearance before the Discipline Committee of the College in 2003, Mr. Bergez had appeared in front of Justice Harris in 2003 and Justice Crane in 2006 whose decisions made it clear to Mr. Bergez that he had to refrain from the conduct in question. Despite the earlier decision of the Discipline Committee and the decisions of the Courts, Mr. Bergez continued with his conduct.

College Counsel also requested that an order be made for an electronic motion to hear the College's motion for costs pursuant to section 53.1 of the Health Professions Procedural Code of the Regulated Health Professions Act.

Mr. Bergez once again put forth the argument that the Panel did not have authority to make findings on Penalty and Costs based on the argument that it lacks jurisdiction on anyone not deemed to be a member. Mr. Bergez quoted from the Health Professions Procedural Code that indicates that a person whose certificate of registration is suspended is not a member. 1991, c. 18, Sched. 2, s. 13

What Mr. Bergez again failed to recognize was the College's continuing jurisdiction as provided under the Health Professions Procedural Code 1991, Sched. 2, s. 14 (2). Thus the Panel again did not accept this argument.

He also argued that he was not the member delegating but rather Mr. Arthur Kochberg was the delegating Optician. This case pertains to infractions that pre-dated Mr. Kochberg's employment with Great Glasses.

Mr. Bergez argued that if he was not on the premises to dispense, how could he have obstructed College investigators? This was also an attempt to re-litigate the same issue already put forward to this panel in its November 11, 2009 Decision and Reasons, namely that, obstruction does not have to be physical. Mr. Bergez was found guilty of obstructing the College investigators through threats of legal action including trespass of property.

Mr. Bergez cited the Kienapple case law to the effect that multiple charges could not stem from one infraction. However, the College in fact is alleging one charge, professional misconduct, and has cited multiple actions that all fall under this category to prove their case.

In any event, all these arguments were directed towards the previous findings of guilt. The Hearing of submissions on Penalty is not the appropriate venue to hear such arguments.

The only argument made by Mr. Bergez that pertained to the issue at hand, the Penalty itself, was one that revocation was too harsh and he equated it to 'professional death'. In response, College

Counsel pointed out that the member if revoked, he is able to apply for reinstatement at a later date.

As well, Mr. Bergez indicated that mitigating factors included being misled by the College's policy on Delegation, the 2006 HPRAC report and by the Ministry of Health.

Penalty Decision

The panel makes the following order as to penalty:

THE PANEL ORDERS AND DIRECTS the Registrar of the College of Opticians of Ontario to immediately revoke the Certificate of Registration of Mr. Bruce Bergez.

With respect to the College's request for an electronic motion for its costs motion:

THE PANEL FURTHER ORDERS that an electronic motion be scheduled for a hearing of the costs motion of the College.

Reasons for Penalty Decision

When deciding the penalty several factors were considered including protecting the public, serving as specific deterrence to the offending member, serving as general deterrence to the membership at large and to reinforce that the College of Opticians of Ontario is able to regulate the profession in a fair and effective manner.

Arguments were heard that the penalty must be proportionate to the conduct and that the circumstances surrounding the proceedings against Mr. Bergez were indeed extraordinary and serious.

Specifically Mr. Bergez has been found guilty of but not limited to, delegating the controlled act of dispensing eyewear, failing to adhere to professional standards such as proper record keeping and dispensing eyewear from a proper prescription, false and misleading advertising and failure to cooperate with College investigators.

In situations of a first time offence, historically a Panel would impose a fine, a suspension of the Certificate of Registration for a specified period of time and possibly some limitations on the member's certificate.

As noted above, Counsel for the College presented information that Mr. Bergez had previously appeared in front of a Panel of the Discipline Committee of the College in 2003 and in a joint submission, plead guilty to dispensing eyewear without a valid prescription contrary to the Opticianry Act. He was reprimanded, fined and had his Certificate of Registration suspended for a period of time with limitations placed on his certificate by the Registrar.

Further to his appearance in front of a discipline panel of the College in 2003, Mr. Bergez appeared in front of Justice Harris in 2003 and Justice Crane in 2006.

In these cases, the Courts have found and upheld decisions that Mr. Bergez has committed egregious breaches of the Opticianry Act through a series of elaborate evasions and false

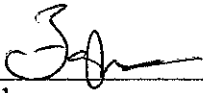
statements including false advertising and false eye examinations that put the public's health and safety at risk.

This pattern of repeated behaviour and the findings of prior courts cannot be ignored. Although Mr. Bergez had previously agreed that he acted improperly he continued his mode of business operation with no regard for prior findings. His conduct indicates a flagrant disregard for the law and a reckless disregard for public safety.

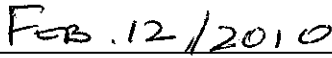
Mr. Bergez was unable to present to the Panel any mitigating factors to consider before reaching a decision on Penalty.

Based on the pattern of prior cases of professional misconduct against Mr. Bergez, the serious nature of the misconduct and his deliberate deception and exploitation of the public, the Panel comes to the conclusion that the member, Mr. Bergez is ungovernable and thus should have his Certificate of Registration revoked.

I, Fazal Khan, 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:



Fazal Khan
Chair, Discipline panel



Date

Fazal Khan
Gloria Baltazar
Derick Summers
Librado Ibe Jr.
Marilyn Fron