

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

PANEL:	Chairperson	Robert Vezina
	Member	Catherine Rowntree
	Member	Mike Smart
	Public Member	Hugh Corbett
	Public Member	Sandra Lawson

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<i>Rebecca Durcan</i> for
)	College of Opticians of Ontario
- and -)	
)	
David Chin)	
REGISTRATION #C-1889)	
)	
)	<i>Luisa Ritacca</i>
)	Independent Legal Counsel
)	
)	
)	Heard: July 23, 2014

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on July 23, 2014 at the College of Opticians of Ontario (“the College”) at Toronto. David Chin (the “Member”) attended the hearing in person. He was not represented by counsel but was accompanied by his adult daughter, who was present for the purpose of translating for the Member from time to time. The panel was satisfied, based on its inquiries of the Member, counsel for the College, and the Member’s daughter, that the Member understood the nature and purpose of the hearing.

The Allegations

The allegations against the Member were set out in a Notice of Hearing, dated February 21, 2014, which was marked as Exhibit #1. In brief, the College alleged that on or about February

19, 2013, Mr. Chin performed a refraction on an investigator sent by the College to his place of business and, based on his assessment, had prescribed corrective lenses for her. The College alleged that by doing so, the Member had engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:

- a. 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);
- b. He contravened a standard of practice of the profession (paragraph 2);
and/or
- c. 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).

The College also alleged that the Member had, by virtue of his conduct, engaged in professional misconduct as set out in subsection 5(2) of the *Opticianry Act* in that he dispensed subnormal vision devices, contact lenses or eyeglasses without a prescription of an optometrist or physician.

Member's Plea

The Member admitted to the allegations as set out in an Agreed Statement of Facts, which was marked as Exhibit #3 and is reproduced below. The Member had previously completed and signed a written Plea Inquiry form on June 1, 2014 in relation to his admissions, which was marked as Exhibit #2. The panel conducted an oral plea inquiry of the Member at the hearing and was satisfied that the Member's admissions were voluntary and unequivocal and that he understood the nature of the allegations against him and the consequences of admitting to them.

The Evidence

The Agreed Statement of Facts, marked as Exhibit #3, provided as follows:

The Member

1. At all material times, David Chin ("the Member") was a member of the College of

Opticians of Ontario ("the College").

2. The Member is not and never has been a member of the College of Optometrists of Ontario or of the College of Physicians and Surgeons of Ontario.

3. At all material times, Mr. Chin had refraction status from the College.

4. At all material times, Mr. Chin practised opticianry at People Optical located at 2347 Kennedy Road, #101A in Scarborough, Ontario ("People Optical").

5. The Member has been cooperative with the investigation into his conduct.

Illegal Prescribing and Dispensing by Member

6. On or about February 19, 2013, an investigator, Debbie D'Angelo, ("Ms. D'Angelo") attended at People Optical and posed as a client.

7. Ms. D'Angelo did not have a prescription for corrective lenses from an optometrist or a physician.

8. The Member invited Ms. D'Angelo to select frames that she liked.

9. The Member then led Ms. D'Angelo to an examination room where he performed a refraction on Ms. D'Angelo and, based on his assessment, prescribed corrective lenses for her.

10. The Member did not ask Ms. D'Angelo any questions about her medical history or her vision.

11. After Ms. D'Angelo paid for the glasses, she asked the Member whether he could provide her with a copy of her prescription as she was going out of town and did not want to have another eye exam.

12. The Member told Ms. D'Angelo that he would provide her with a copy of her prescription when she returned the next day to pick up her glasses.

13. On or about February 20, 2013, Ms. D'Angelo returned to People Optical to pick up her eyeglasses. Another individual who was not the Member and was not wearing a name tag delivered the glasses to Ms. D'Angelo.

14. When Ms. D'Angelo requested a copy of her prescription, the individual who had delivered the glasses to her called for the Member who was in the eye examination room.

15. The Member initially refused to provide Ms. D'Angelo with a copy of the prescription, explaining that he was only permitted to conduct the eye exam and to provide glasses but not to provide a prescription.

16. Eventually, after Ms. D'Angelo persisted in her request, the Member acquiesced and provided Ms. D'Angelo with the prescription form that the Member had completed based on the refraction he had performed. The Member indicated that he was only providing it 'this one time'.

17. In the course of the College's investigation into this conduct, the Member wrote in his response to the College, dated May 12, 2013, that he "will no longer provide refractions or dispense corrective lenses based on those examinations".

Not Wearing Identification

18. During his interactions with Ms. D'Angelo on or about both February 19 and February 20, 2013, the Member was not wearing a name tag or photo identification.

Professional Misconduct

19. The parties agree that the above constitutes professional misconduct on the part of the Member pursuant to paragraph 26 (contravening a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), paragraph 2 (contravened a standard of practice of the profession) and paragraph 28

(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) of section 1 of Ontario Regulation 828/93 under the *Opticianry Act*, S.O. 1991, c.34.

20. The parties further agree that the above constitutes professional misconduct on the part of the Member pursuant to subsection 5(2) of the *Opticianry Act* in that he dispensed subnormal vision devices, contact lenses or eyeglasses without a prescription of an optometrist or physician.

Decision

The panel was satisfied on the basis of the Agreed Statement of Facts, the Member's admissions and plea, and the submissions of counsel for the College, that the facts as admitted supported a finding of professional misconduct, and, in particular, that the Member had committed the acts of professional misconduct as set out in paragraphs 19 and 20 of the Agreed Statement of Facts.

Reasons for Decision

The panel concluded that the Member had committed the acts of professional misconduct admitted to in the Agreed Statement of Facts. The Member had signed the Plea Inquiry (Exhibit #2), which the panel had carefully reviewed with him at the hearing. The Member did not dispute any of the allegations.

It should be noted that the Member was one of a comparatively few number of opticians in Ontario who possessed a refraction designation which permitted him to conduct refractions on patients in very limited and tightly controlled circumstances. According to the Member's registration history, which was marked as Exhibit #4, he obtained the designation in July 2008. The panel was presented with the College's "Standard of Practice: Refraction", which was marked as Exhibit #5, which elaborates on those situations and the strict conditions which must

be complied with by an optician permitted to perform refractions. We have little hesitation in concluding, based on the evidence before us that the Member failed to comply with those conditions when he performed the refraction on Ms. D'Angelo and issued her a prescription.

At one point during the course of the hearing, the Member stated to the panel that he was under the mistaken impression that his refraction designation permitted him to issue the prescription to Ms. D'Angelo. The panel gave little weight to this submission. At the time of the events, the Member was a highly experienced optician who had held his refraction designation for almost five years. If he didn't know better, he ought to have known better. It is incumbent on every Member to be fully conversant and to comply with all applicable legislation, regulations and other requirements under which he or she may be practising.

Penalty

Penalty Submissions

The parties presented the panel with a Joint Submission on Penalty, in which the parties proposed that the panel impose the following penalty on the Member:

- a) The Member shall be required to appear before the panel to be reprimanded;
- b) The Member is required to pay the College a portion of its costs in this matter in the amount of \$1000, within 3 (three) months of the date of this order.

Penalty Decision

The panel makes the following order as to penalty:

- a) The Member shall be required to appear before the panel to be reprimanded;
- b) The Member is required to pay the College a portion of its costs in this matter in the amount of \$1000, within 3 (three) months of the date of this order.

Reasons for Penalty Decision

Counsel for the College provided the panel with a Penalty Brief which included four prior decisions of the College addressing professional misconduct of a similar nature to that admitted to by the Member here (see: *Eikeland*, 2009; *Glazier*, 2003; *Hammerl*, 2008; and *Dlhopolec*,

2012). These cases appear to indicate that misconduct of this nature typically calls for the Member to receive a reprimand, a suspension of the Member's certificate of registration in opticianry for at least two weeks (and in one case, four weeks), together with a term and condition on the Member's registration that the College may conduct random inspections of the Member's practice for a period of two years.

Counsel for the College advised the panel that penalties of the type described above were not practical in this case. The panel was informed at the hearing that the Member, who is advanced in years and was first registered as an optician in 1991, had elected to retire following the complaint filed against him in relation to the February 19-20, 2013 events described above. The panel was provided with a copy of the Member's registration history (Exhibit #4), which confirmed that he had not renewed his registration for 2014. While the penalty imposed on the Member in this case is at the lower end of the spectrum when compared to the prior decisions referred to above, the panel was satisfied, having regard to all of the circumstances, that the penalty was reasonable and appropriate.

The panel also accepted the joint submission to impose costs of \$1,000 on the Member and to provide him with three months in which to pay this amount. Counsel for the College advised the panel that while this costs award was also at the lower end of the spectrum for misconduct of this nature when compared to the aforementioned prior decisions (where the costs ranged from a minimum of \$2,500 to a maximum of \$8,000 and averaged just over \$4,000 payable over a period of three months or more), counsel for the College submitted that there were extenuating circumstances present in this case that warranted a lower costs award, namely that the Member was of limited means and was now retired. The panel was satisfied that the proposed costs award was appropriate in the circumstances and so ordered.

At the conclusion of the hearing, the panel excused the public and College staff from the hearing room and administered the reprimand to the Member.

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:

Robert Vejnio

Chairperson

October 8, 2014

Date

Hugh Corbett
Michael Smart
Saundra Lawson
Catherine Roundtree