

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

Panel: Mr. Marvin Ross, Chair, Public Member
Mr. Derek Summers, Appointed Optician Member
Ms. Parm Dillon, Elected Optician Member
Mr. Puttaveer Prabhakara, Public Member
Mr. Dennis Lam, Appointed Optician Member

Between

College of Opticians of Ontario

Mr. David Rosenbaum, Counsel for
the College

Mr. Paul LeVay, Independent Legal Counsel

and

Mr. Richard Lucien Diguier, C-1389

Member, Self Represented

April 21, 2008

DECISION AND REASONS

The matter came on for hearing before a panel of the Discipline Committee on April 21, 2008 at the College of Opticians of Ontario in Toronto.

The Allegations

Counsel for the College submitted a copy of the Notice of Hearing (marked as exhibit 1) which set out the allegations against Mr. Diguier. It was alleged that Mr. Diguier committed acts of professional misconduct pursuant to the provisions of section 5 of the Opticianry Act 1991, S.O. 1991, c.34 (the "Act") and as defined in section 1, paragraph 2 and 28 of Regulation 828/93, as amended, promulgated pursuant to the Act in that on or about January 14, 2005 he:

- (a) contravened a standard of practice of the profession;
- (b) dispensed eyeglasses for vision or eye problems that were not simple magnifiers without a prescription from a physician or optometrist;
- (c) contravened section 27 of the Regulated Health Professions Act, S. O. 1991, c. 18 (the "RHPA") by performing the controlled act of prescribing eyeglasses without being authorized by a health profession Act to do so; and
- (d) engaged in conduct in the course of practising 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, on or about January 14-17, 2005:

- i. That Mr. Diguier performed refractometry on Mr. Carl Roy at RLD Opticians, 122 Tudhope Street, Espanola, Ontario, (“RLD Opticians”), contrary to the standard of practice and directive of the College of Opticians dated March 9, 2001, which was disseminated to members on or about March 14, 2001, and which prohibited members from performing refractometry until effective and enforceable standards or practice for the performance of refractometry by opticians had been developed and adopted, 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;
- ii. That Mr. Diguier dispensed prescription eyeglasses to Mr. Roy without a prescription from a physician or optometrist;
- iii. That Mr. Diguier prescribed eyeglasses to Mr. Roy without being authorized to do so; and
- iv. That Mr. Diguier mislead Mr. Roy into believing that he was authorized to perform refractometry and prescribe eyeglasses by so performing and prescribing and failing to inform Mr. Roy otherwise.

Members Plea

Richard Diguier C-1389 admitted to the allegations set out in the Notice of Hearing. The panel was satisfied that the Member's admission was voluntary, informed and unequivocal.

Statement of Agreed Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced a Statement of Agreed Facts and a Consent Disposition marked as exhibit 2. The Statement of Agreed Facts provided as follows:

FACTS

1. The member, Richard Diguier (“Mr. Diguier”) is a member of the College of Opticians of Ontario. His membership number is C-1389
2. Mr. Diguier is not a member of the College of Optometrists or the College of Physicians and Surgeons of Ontario
3. Mr. Diguier is the owner of RLD Opticians at 122 Tudhope Street, Espanola, Ontario P5B 1S6 (the “Store”).
4. On January 17, 2005, the patient, Mr. Carl Roy, attended at the store seeking new eyeglasses. Mr. Roy was not an existing patient of Mr. Diguier. Mr. Roy did not have a prescription from a physician or an optometrist. Neither did he have a pair of old eyeglasses when he entered the store.
5. Mr. Diguier dispensed eyeglasses to Mr. Roy without a prescription from a physician or an

optometrist.

6. Mr. Diguier performed refractometry on Mr. Roy manually using a retinoscope. A copy of the refractometry test was presented.
7. Mr. Diguier failed to advise Mr. Roy that he was not authorized to perform refractometry or prescribe eyeglasses. He also failed to advise Mr. Roy that he was not a doctor.
8. Mr. Diguier used the results of the refractometry test to prepare a prescription for Mr. Roy for eyeglasses. A copy of the prescription was presented.
9. The prescription is on a prescription pad of a Dr. Cleaver Keenan and purports to bear Dr. Keenan's signature. Dr. Keenan was not present at RLD Opticians on January 17, 2005. Mr. Roy is not a patient of Dr. Keenan, he has never been examined by Dr. Keenan and he has never even met Dr. Keenan.
10. On January 17, 2005, Mr. Diguier dispensed prescription eyeglasses to Mr. Roy on the basis of the prescription he prepared using the results from the refractometry test that he performed. A copy of the receipt for purchase was presented.
11. Mr. Diguier misled Mr. Roy into believing he was authorized to perform refractometry and prescribe eyeglasses by performing and prescribing and failing to inform Mr. Roy otherwise.
12. Mr. Diguier was aware of the March 9, 2001 directive of the College of Opticians of Ontario which adopted a standard of practice that prohibits opticians from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians have been developed and adopted and which provides that opticians shall not use the results of a refractometry test to alter a prescription. The College directive was presented.
13. The College directive came into effect on March 9, 2001 and was still in force on January 17, 2005.

Decision:

The panel deliberated and decided to accept Mr. Diguier's admission to the allegations in the Notice of Hearing. The panel reviewed and considered the Notice of Hearing, the Statement of Agreed Facts, the submission of the parties and found that the facts support findings of professional misconduct.

Penalty:

Counsel for the College advised the panel that a joint submission as to penalty had been agreed upon. Mr. Diguier stated that he was in full agreement with the consent disposition.

CONSENT DISPOSITION

The parties agreed to dispose of this matter in the following way:

Mr. Diguier has signed an undertaking in the following terms:

(a) Mr. Diguier will not perform refractometry unless or until such time as he is qualified to do so in accordance with the requirements set out by the College in the new Standard of Practice for Refraction (passed by Council on September 25, 2007). This undertaking includes an acknowledgment that a breach thereof would be a breach of professional misconduct.

(b) In accordance with section 4.1 of the Statutory Powers and Procedures Act, the parties consent to the disposition of this proceeding without a hearing by an Order of the Discipline Panel in the form attached:

1. Mr. Diguier shall appear before the panel to be reprimanded and the fact of the reprimand shall be mentioned in the Register.
2. Mr. Diguier's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on April 21, 2008
3. The panel directs the Registrar to place the following specified term condition or limitation on Mr. Diguier's certificate of registration for a period of two years commencing from April 21, 2008

(a) the College may, without notice, conduct random inspections of Mr. Diguier's practice for a period of two (2) years commencing on April 21, 2008. 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. Diguier 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. Diguier will cooperate with the random inspections and instruct his employees to do the same.

4. Pursuant to section 53.1 of the Health Professions Procedural Code, Mr. Diguier shall pay part of the costs of the College of Opticians of Ontario in the amount of \$4000. The costs can be paid over a period of ten (10) months at a rate of \$400 per month. The payments will be made by way of ten (10) preauthorized debits from a specified credit card in the amount of \$400 payable on the 15th of each month, to commence immediately after April 21, 2008, until final payment is rendered. If any debit to Mr. Diguier's credit card cannot be processed on the payment date, the total amount remaining outstanding shall be due and payable forthwith.

Penalty Decision and Reasons

The panel accepts the Consent Disposition and believes the penalty is appropriate to deter Mr. Diguier and other opticians from engaging in this type of activity in the future.

The panel reviewed and considered the Notice of Hearing, the Consent Disposition, the submissions of the parties, the Case brief, and the legal advice by Mr. LeVay and accordingly orders the following:

4. Mr. Diguier shall appear before the panel to be reprimanded and the fact of the reprimand shall be mentioned in the Register.
5. Mr. Diguier's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on April 21, 2008
6. The panel directs the Registrar to place the following specified term condition or limitation on Mr. Diguier's certificate of registration for a period of two years commencing from April 21,

2008

(a) the College may, without notice, conduct random inspections of Mr. Diguer's practice for a period of two (2) years commencing on April 21, 2008. 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. Diguer 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. Diguer will cooperate with the random inspections and instruct his employees to do the same.

1. Pursuant to section 53.1 of the Health Professions Procedural Code, Mr. Diguer shall pay part of the costs of the College of Opticians of Ontario in the amount of \$4000. The costs can be paid over a period of ten (10) months at a rate of \$400 per month. The payments will be made by way of ten (10) preauthorized debits from a specified credit card in the amount of \$400 payable on the 15th of each month, to commence immediately after April 21, 2008, until final payment is rendered. If any debit to Mr. Diguer's credit card cannot be processed on the payment date, the total amount remaining outstanding shall be due and payable forthwith.

Mr. Diguer waived his right to appeal and the panel issued its reprimand at the end of the hearing.