

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

PANEL:

Eve Hoch, Chairperson
Susan Carlyle, Public Member
Ingrid Koenig, Optician Member
Jeff Fernandes, Optician Member
Bryan Todd, Optician Member

BETWEEN:

| | | |
|---------------------------------|---|---------------------------------|
| COLLEGE OF OPTICIANS OF ONTARIO |) | |
| |) | <u>Rebecca Durcan</u> |
| |) | College of Opticians of Ontario |
| - and - |) | |
| |) | <u>Garry Morrison</u> |
| |) | Self Represented |
| GARRY MORRISON |) | |
| |) | <u>Luisa Ritacca</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | |
| |) | Heard: April 8, 2015 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 8, 2015 at the College of Opticians of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Garry Morrison (the “Member”) as stated in the Notice of Hearing dated September 8, 2014, are as follows.

1. Garry Morrison ("Mr. Morrison") was a registered optician with the College of Opticians of Ontario (the "College") from 1980 until his administrative suspension in May 2014.
2. Mr. Morrison operated Dixie Optical out of Unit 37 of Dixie Outlet Mall from 1980 to approximately October 2013.

3. On or about October 8, 2013, Mr. Morrison's landlord at Dixie Outlet Mall, JP, sent Mr. Morrison a re-entry letter as Mr. Morrison had not attended Dixie Optical in several weeks or returned phone calls made to him. This correspondence was not picked up by Mr. Morrison.
4. On or about October 21, 2013, JP sent Mr. Morrison a Notice of Abandonment. This correspondence was not picked up by Mr. Morrison.
5. On or about January 14, 2014, the College received a telephone call from the Office of the Information and Privacy Commission of Ontario (the "IPCO") regarding Mr. Morrison. The IPCO informed the College that Mr. Morrison had closed or left Dixie Optical and left behind boxes containing patient files.
6. On or about March 14, 2014, the College attempted to contact Mr. Morrison and notify him of his obligation under the Personal Health Information Protection Act, 2004 and the Standards of Practice of the College to ensure that all members secure storage and disposal of patient information. This correspondence was returned to the College.
7. On or about March 21, 2014, the College attempted to contact Mr. Morrison and inform him that JP would be disposing of Mr. Morrison's patient files on or about April 1, 2014. This correspondence was returned to the College.
8. On or about May 26, 2014, Mr. Morrison was placed on Administrative Suspension with the College for non-payment of fees.
9. To date Mr. Morrison has not been in contact with the College or JP regarding the abandonment of Dixie Optical.
10. It is alleged that Mr. Morrison 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 failed to reply without sufficient reason to a registered letter from the College (paragraph 16); 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 admitted to the allegations as set out in the Agreed Statement of Facts, described below. The Member signed a written plea inquiry, which was marked as Exhibit #2. In addition, the panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

The Evidence

The parties presented an Agreed Statement of Facts, which was marked as Exhibit #3 and provided as follows:

The parties agree that the following facts may be accepted as true:

1. Garry Morrison ("Mr. Morrison") was a registered optician with the College of Opticians of Ontario (the "College") from 1980 until his administrative suspension in May 2014.
2. Mr. Morrison has no previous disciplinary history with the College.
3. Mr. Morrison operated Dixie Optical out of Unit 37 of Dixie Outlet Mall from 1980 to approximately October 2013.
4. In or about October 2013, Mr. Morrison closed Dixie Optical without notice to his landlord, JP, or his clients. If Mr. Morrison were to testify, he would advise the panel that he was going through personal and financial difficulties during this time. If Mr. Morrison were to testify, he would advise the panel that he sincerely regrets the decision to not provide notice to JP or his clients.
5. On or about October 21, 2013, JP sent Mr. Morrison a Notice of Abandonment.
6. On or about January 14, 2014, the College received a telephone call from the Office of the Information and Privacy Commission of Ontario (the "IPCO") regarding Mr. Morrison. The IPCO informed the College that Mr. Morrison had closed or left Dixie Optical and left behind boxes containing patient files.
7. On or about March 14, 2014, the College attempted to contact Mr. Morrison and notify him of his obligation under the *Personal Health Information Protection Act*, 2004 and the Standards of Practice of the College to ensure secure storage and disposal of patient information.
8. On or about March 21, 2014, the College attempted to contact Mr. Morrison and inform him that JP would be disposing of Mr. Morrison's patient files on or about April 1, 2014.
9. On or about March 26, 2014, the College wrote to Mr. Morrison and advised him of its notice to suspend his certificate of registration as a result of his failure to submit his annual renewal.

10. On or about April 7, 2014, the College received a partially completed Annual Renewal Form from Mr. Morrison. The College attempted to call Mr. Morrison but was unable to contact him.
11. On or about May 26, 2014, Mr. Morrison was placed on Administrative Suspension.
12. Since October 2014, Mr. Morrison has been co-operative with the College.
13. It is agreed that Mr. Morrison 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 failed to reply without sufficient reason to a registered letter from the College (paragraph 16); 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).

Decision

Having considered the evidence set out in the Agreed Statement of Facts, the Member's admissions, and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in paragraph 13 of the Agreed Statement of Facts.

Reasons for Decision

It is a professional misconduct to breach the standards of practice of the profession. The Panel found that the requirement of the privacy legislation had not been maintained by the Member. All information obtained from patients must remain confidential and must not be disclosed to a third person except as may be authorized or required by law. By leaving patient files at his place of business, namely Dixie Optical in the Dixie Mall in Toronto, Ontario, the Member effectively abandoned his files with his landlord, JP. Patient files must be maintained in the dispensary for a minimum of six years from the date of last entry.

Mr. Morrison, by his own admission, did not reply to a registered letter from the College regarding the Notice of Abandonment on October 2013. Again on or about March 14, 2014 Mr. Morrison failed to acknowledge his obligation under the *Personal Health Information Act, 2004*

The conduct of Mr. Morrison during the period of time of October 2013 and his Administrative Suspension on or about May 26th, 2014, would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional. .

Penalty

Penalty Submissions

The parties presented the panel with an Order, which provides as follows:

1. The College of Opticians of Ontario (“the College”) and Garry Morrison (“the Member”) agree to an order by the Discipline Committee as follows:
 - (a) The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
 - (b) When the Member’s certificate is administratively reinstated,
 - (i) The Discipline Committee shall direct the Registrar to suspend the Member’s certificate of registration for one (1) month, to commence on a date to be set by the Registrar.
 - (ii) The Registrar will suspend two (2) weeks of the suspension ordered in paragraph 1(b)(i) if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 1(d) of this order within 3 (three) months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 1(d) of this order within 1 (one) year of the date of this Order.
 - (iii) The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member’s certificate of registration requiring him to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in Standards of Practice and Privacy Legislation, the cost of which will be borne by the Member.
 - (c) The Member is required to pay the College a portion of its costs in this matter in the amount of \$500 within 6 (six) months of the date of this order.

Penalty Decision

The panel accepted the parties’ joint submission and order as follows:

1. The College of Opticians of Ontario (“the College”) and Garry Morrison (“the Member”) agree to an order by the Discipline Committee as follows:
 - (a) The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
 - (b) When the Member’s certificate is administratively reinstated,

- (i) The Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for one (1) month, to commence on a date to be set by the Registrar.
 - (ii) The Registrar will suspend two (2) weeks of the suspension ordered in paragraph 1(b)(i) if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 1(d) of this order within 3 (three) months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 1(d) of this order within 1 (one) year of the date of this Order.
 - (iii) The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in record keeping, the cost of which will be borne by the Member.
- (c) The Member is required to pay the College a portion of its costs in this matter in the amount of \$500 within 6 (six) months of the date of this order.

Reasons for Penalty Decision

The Panel concluded that the proposed penalty and costs order was reasonable for the following reasons:

1. Mr. Morrison admitted to the allegations as set out in the Agreed Statement of Facts. Mr. Morrison signed a written plea inquiry. In addition, the panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.
2. The Panel also agreed that as a registered Optician with the College of Opticians of Ontario since 1980, the Member's record had been uninterrupted by any disciplinary history with the College.
3. Mr. Morrison advised the panel that the mitigating circumstances at the time of leaving without notice from Dixie Optical were exacerbated by financial and personal difficulties. The panel was in agreement the allegations were serious in nature but that the member was acting out under stress and it was considered "out of character".
4. The Panel accepted the parties' joint proposal. The Member fulfilled the requirement to appear before the panel to be reprimanded at the conclusion of the oral hearing.
5. The Member will benefit from taking part in a course, approved by the Registrar, in Standards of Practice and Privacy Legislation.
6. The penalty serves as both a general and specific deterrent. It will also serve to protect the public and to discourage similar conduct in the future.

I, **Eve Hoch**, 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:



April 25, 2015

Eve Hoch, Chairperson

Date

Names of panel members

Susan Carlyle

Ingrid Koenig

Jeff Fernandes

Bryan Todd