

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

Panel: Mr. Mike Smart, Chair, Public Member
Mr. Ed Viveiros, Appointed Optician Member
Ms. Akwasi D Boakye, Appointed Optician Member
Mr. Buddy Ibe, Public Member
Mrs. Gloria Baltazar, Public Member

Between

College of Opticians of Ontario

Mr. David Rosenbaum, Counsel for the College
Ms. Nadia Jandali

and

Mr. Josef Hammerl, C-525

Member, Self Represented

Ms. Luisa Ritacca, Independent Legal Counsel

October 2, 2008

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee of the College of Opticians of Ontario ("College") on October 2, 2008 at the College offices in Toronto, Ontario.

The Allegations

College Counsel submitted a copy of the Notice of Hearing (marked as Exhibit 1) which set out the allegations against Mr. Hammerl. It was alleged that Mr. Hammerl 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 November 22, 2006 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 November 22, 2006:

- (i) That Mr. Hammerl performed refractometry on Mr. Wayne Moore at Mr. Opticians, 5-B52 Ontario St., Stratford, Ontario, ("Mr 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 of 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. Hammerl dispensed prescription eyeglasses to Mr. Moore without a prescription from a physician or optometrist;
- (iii) That Mr. Hammerl prescribed eyeglasses to Mr. Moore without being authorized to do so; and
- (iv) That Mr. Hammerl misled Mr. Moore into believing that he was authorized to perform refractometry and prescribe eyeglasses by so performing and prescribing and failing to inform Mr. Moore otherwise.

Members Plea

Josef Hammerl, C-525 admitted to the allegations as 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 an 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, Josef Hammerl ("Mr. Hammerl") is a member of the College of Opticians of Ontario. His membership number is C-525

2. Mr. Hammerl is not a member of the College of Optometrists or the College of Physicians and Surgeons of Ontario
3. Mr. Hammerl is the owner of Mr Opticians at 5-B52 Ontario St.,Stratford, Ontario N5A 3K1 (the "Store").
4. On November 22, 2006, the patient, Mr. Wayne Moore, attended at the store seeking new eyeglasses. Mr. Moore was not an existing patient of Mr. Hammerl. Mr. Moore did not have a prescription from a physician or an optometrist. He did have a pair of prescription eyeglasses that were several years old (the "Old Glasses") when he entered the store.
5. When Mr. Moore entered the store, an individual by the name of Fred Hammerl offered him assistance. Fred Hammerl is Joseph Hammerl's son. He is not a member of the College. Fred Hammerl is also not a member of the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario.
6. Mr. Moore showed Fred Hammerl the Old Glasses, indicated he did not have a current prescription, and asked if Fred Hammerl could check the glasses to obtain his prescription. Fred Hammerl agreed to assist in this manner and also indicated that he could provide Mr. Moore with a "free eye exam" to check against the results of a prescription obtained from the Old Glasses.
7. Mr. Hammerl was in the Store on November 22, 2006 and worked with Fred Hammerl in assisting Mr. Moore.
8. Fred and Mr. Hammerl first examined the Old Glasses to determine the prescription of the lenses. Fred Hammerl performed this assessment using a computerized lensometer. Mr. Hammerl performed this assessment using a manual lensometer. Their assessments produced the same result.
9. Fred Hammerl then performed refraction on Mr. Moore. A copy of the refractometry test was presented.
10. Mr. Hammerl reviewed the results of the refraction test performed by Fred Hammerl and used the results to determine a prescription for Mr. Moore ("the Hammerl Prescription"). He then compared the Hammerl Prescription to the prescription used in the Old Glasses and proceeded to tell Mr. Moore that a new pair of glasses would improve his vision.
11. Mr. Moore decided to purchase a new pair of eyeglasses from the Store.
12. Mr. Hammerl proceeded to assist Mr. Moore in selecting a new pair of eyeglasses. He described progressive lenses to Mr. Moore and then provided instruction to Mr. Moore on how to use eyeglasses containing this type of lens. he also use a pupilometer to measure Mr. Moore's PD (pupillary intraocular separation distance).
13. Mr. Hammerl failed to advise Mr. Moore that he was not authorized to perform refractometry or prescribe eyeglasses. He also failed to advise Mr. Moore that he was not a doctor.

14. On November 22, 2006, Mr. Hammerl dispensed prescription eyeglasses to Mr. Moore that were not simple magnifiers without a prescription from a physician or optometrist. Mr. Hammerl dispensed eyeglasses to Mr. Moore on the basis of the results of the refractometry test that Fred Hammerl performed. A copy of the receipt for purchase was presented.
15. The glasses that Mr. Moore purchased from the Store contained a different prescription than the glasses that he brought with him to the Store.
16. When Mr. Moore asked for a copy of his new prescription, Mr. Hammerl advised Mr. Moore that he did not give out prescriptions but that his new eyeglasses were his "prescription".
17. By allowing Fred Hammerl to perform a refraction on Mr. Moore, using these results to dispense prescription eyeglasses to Mr. Moore and informing Mr. Moore that his eyeglasses were his prescription, Mr. Hammerl intended to mislead Mr. Moore into believing that he was receiving eyeglasses pursuant to a valid prescription, when in fact, he was not.
18. Mr. Hammerl misled Mr. Moore into believing he was authorized to perform refractometry and prescribe eyeglasses by performing and prescribing and failing to inform Mr. Moore otherwise.
19. On March 9, 2001, the Council for the College passed a resolution (the "Resolution") that prohibited members of the College from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians have been developed and adopted. No such standards were in place on or about November 22, 2006. The Resolution also prohibited members of the College from using the results of refractometry tests to alter a prescription. The content of the Resolution was disseminated to the members of the College of Opticians in an Optical Bulletin on March 14, 2001.
20. Mr. Hammerl was aware of the Resolution, and further, he knew that the Resolution was still in force at the time he engaged in the conduct at issue on November 22, 2006.

DECISION

The panel considered the Agreed Statement of Facts and finds that the facts therein support a finding of professional misconduct as alleged in the Notice of Hearing. In particular, the panel finds the Member committed an act of professional misconduct in that 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

Penalty:

College Counsel advised the panel that a joint submission as to penalty had been agreed upon. Mr. Hammerl 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. Hammerl has signed an undertaking with the following terms:

- (e) Mr. Hammerl 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.
- (f) 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. Hammerl shall appear before the panel to be reprimanded and the fact of the reprimand shall be mentioned in the Register.
 - 2. Mr. Hammerl's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on October 2, 2008
 - 3. The panel directs the Registrar to place the following specified term condition or limitation on Mr. Hammerl's certificate of registration for a period of two years commencing from October 2, 2008
 - (a) the College may, without notice, conduct random inspections of Mr. Hammerl's practice for a period of two (2) years commencing on October 2, 2008. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of eight (8) over the two (2) year period. Mr. Hammerl 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. Hammerl 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. Hammerl 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 twelve (12) months at a rate of \$333.33 per month. The payments will be made by way of twelve (12) post dated cheques.

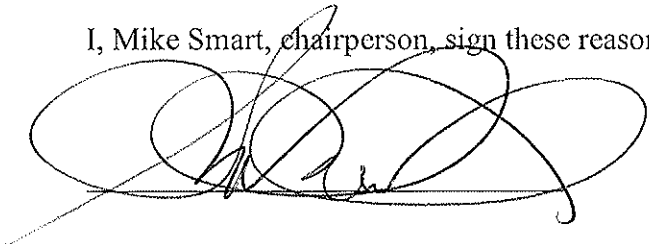
Penalty Decision and Reasons

The panel accepts the Consent Disposition as it finds that the penalty set out therein is appropriate to deter Mr. Hammerl and other opticians from engaging in this type of activity in the future.

In light of the Consent Disposition, the panel orders as follows:

1. Mr. Hammerl shall appear before the panel to be reprimanded and the fact of the reprimand shall be recorded in the Register.
2. Mr. Hammerl's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on October 2, 2008
3. The panel directs the Registrar to place the following specified term condition or limitation on Mr. Hammerl's certificate of registration for a period of two years commencing from October 2, 2008
 - (a) the College may, without notice, conduct random inspections of Mr. Hammerl's practice for a period of two (2) years commencing on October 2, 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. Hammerl 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. Hammerl 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. Hammerl 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 twelve (12) months at a rate of \$333.33 per month. The payments will be made by way of twelve (12) post dated cheques, to commence immediately after October 2, 2008, until final payment is rendered.
5. Mr. Hammerl waived his right to appeal and the panel issued its reprimand at the end of the hearing.

I, Mike Smart, chairperson, sign these reasons on behalf of the panel members listed above.

A handwritten signature in black ink, appearing to be 'Mike Smart', written over a horizontal line. The signature is stylized and somewhat cursive.