

The Discipline Committee of the College of Opticians of Ontario

Panel: Mr. Fazal Khan, Chair, Professional Member
Ms. Colleen Karir, Professional Member
Mr. Udham Tonk, Public Appointed Member
Ms. Niti Jassal, Professional Member

B E T W E E N:

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| College of Opticians of Ontario |) | Ms. Melisse Willems, Counsel for the College of Opticians of Ontario |
| |) | |
| -and- |) | Ms. Lisa Braverman, Independent Legal Counsel |
| |) | |
| Mr. Guido Panacci, C-877 |) | Mr. Gregory Jones, Counsel for Guido Panacci |
| |) | April 7, 2006 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 7, 2006, at the College of Opticians of Ontario.

The Allegations:

IT IS ALLEGED that Mr. Panacci has committed acts of professional misconduct as defined in clauses 51(1)(a), 51(1)(b.1) and 51(1)(c) of the Code and section 1, paragraphs 6, 27, and 28 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34 (the “Act”) in that:

- (a) on or about January 20, 2004, Mr. Panacci sexually abused a patient;
- (b) on or about January 20, 2004, Mr. Panacci physically abused a patient;
- (c) on or about January 20, 2004, Mr. Panacci engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional; and

- (d) on or about March 8, 2005, Mr. Panacci was found guilty of contravening section 265 of the *Criminal Code*, R.S.C. 1985, c. C-46, s. 745 (the “*Criminal Code*”) for committing the offence of assault, which contravention is relevant to his suitability to practice.

THE PARTICULARS of these allegations are:

- (i) On or about January 20, 2004, Mr. Panacci engaged in touching of a sexual nature of T.H., a patient, at MD Optical Ltd. located at 102-3170 Lakeshore Blvd. West, Toronto, Ontario; and he engaged in behaviour and made remarks toward her of a sexual nature; and
- (ii) On or about March 8, 2005, Mr. Panacci pleaded guilty to the charge of and was convicted of assault contrary to section 265 of the *Criminal Code*.

Counsel for the College filed the Notice of Hearing dated April 25, 2005, as Exhibit 1 and the Agreed Statement of Facts as Exhibit 3.

Member’s Plea:

Guido Panacci, C-877, admitted the allegations set out in the Notice of Hearing. The Panel was satisfied that the Member’s admission was voluntary, informed and unequivocal.

Agreed Statement of Facts:

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced the Agreed Statement of Facts which provides as follows:

1. Guido Panacci is a member of the College of Opticians of Ontario with registration number C-877. Mr. Panacci was a member of the College at all relevant times.
2. Mr. Panacci is the owner and operator of MD Optical Ltd. located at 3170 Lakeshore Blvd. West, Suite 102, Toronto, Ontario (the “Store”).
3. On Tuesday January 20, 2004, at 11:00 a.m., T.H. attended the store for the purpose of obtaining an eye examination. Mr. Panacci served T.H. on this occasion.
4. T.H. was escorted by Mr. Panacci to an eye examination room. No one else was in the room with them and the door was closed at all times. During the examination, Mr. Panacci made a number of sexually suggestive remarks

towards T.H. that made her uncomfortable. Mr. Panacci said to T.H. “*oh, you and me in a dark room together, this could be interesting*” as he squeezed her shoulders. Mr. Panacci also asked T.H. if she was scared to be in a dark room with him. When T.H. asked Mr. Panacci if he minded if she removed her jacket, he suggested that she take off all of her clothes. During the examination, Mr. Panacci stroked T.H.’s face, told her that she had beautiful eyes and commented that she looked “*hot*”.

5. After the examination, Mr. Panacci approached T.H., put his arm around her right shoulder and pulled her towards him. He began grabbing and rubbing her buttocks. At the same time, he thrust his pelvis against her and began to gyrate, pressing his penis against her body and groaning. T.H. could feel that Mr. Panacci had an erection. Mr. Panacci then asked T.H. if she wanted to make a deal. She asked him what he meant. Mr. Panacci cocked his eyebrows and asked her a second and third time if she wanted to make a deal. T.H. dismissed these remarks, pushed Mr. Panacci away, ran out of the examination room and left the office.
6. At all relevant times and in particular on or about January 20, 2004, T.H. was a patient of Mr. Panacci.
7. On March 8, 2005, Mr. Panacci pleaded guilty to and was convicted of assault against T.H. contrary to section 266 of the *Canadian Criminal Code* in respect of his actions described above.
8. On May 10, 2005, Mr. Panacci received a three (3) month conditional sentence and two (2) years probation in respect of his criminal conviction on March 8, 2005.

Decision:

The Panel deliberated and accepted Mr. Panacci’s admission to the allegations in the Notice of Hearing. The Panel reviewed and considered the Notice of Hearing, the Agreed Statement of Facts, exhibits 1 through 9, the legal advice of Ms. Braverman and the submissions of the parties and found the facts support findings of professional misconduct. In particular, the Panel made findings that Mr. Panacci committed acts of professional misconduct in that:

- 1) On or about March 8, 2005, Mr. Panacci was found guilty of contravening section 265 of the *Criminal Code* for committing the offence of assault, which contravention is relevant to his suitability to practice, contrary to section 51(1)(a) of the *Health Professions Procedural Code* and section 51(1)(c) of the *Health Professions Procedural Code* in that Mr. Panacci violated paragraph 27, of the *Professional Misconduct Regulation, Ontario Regulation 828/93*.

- 2) On or about January 20, 2004, Mr. Panacci sexually abused a patient, contrary to section 51(1)(b.1) of the *Health Professions Procedural Code*.
- 3) On or about January 20, 2004, Mr. Panacci physically abused a patient, contrary to Section 51(1)(c) of the *Health Professions Procedural Code* in that Mr. Panacci violated paragraph 6 of the *Professional Misconduct Regulation, Ontario Regulation 828/93*.
- 4) On or about January 20, 2004, Mr. Panacci engaged in the conduct in the course of practising opticianry, that having regard to all circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional, contrary to Section 51(1)(c) of the *Health Professions Procedural Code* in that Mr. Panacci violated paragraph 28 of the *Professional Misconduct Regulation, Ontario Regulation 828/93*.

At the conclusion of the hearing and on the request of the complainant, as communicated through Counsel for the College and consented to by Counsel for the Member, the Panel ordered, pursuant to section 47 of the *Health Professions Procedural Code*, that neither the complainant's identity nor any information that could disclose the identity of the complainant be published.

Reasons for the Decision:

Allegation (i) states that on or about January 20, 2004, Mr. Panacci engaged in touching of a sexual nature of T.H., a patient, at MD Optical Ltd. and engaged in behaviour and made remarks toward her of a sexual nature. The Agreed Statement of Facts submitted by College counsel provided support for this allegation.

Allegation (ii) states that on or about March 8, 2005, Mr. Panacci pleaded guilty to the charge of and was convicted of assault contrary to section 265 of the *Criminal Code*. Exhibits 4-8, as submitted by Counsel for the College, included the Guilty Plea, Sentencing, Probation Order and Conditional Sentence Order. These exhibits support said allegation.

Penalty:

Counsel for the College advised the Panel that a joint submission on order had been agreed upon and introduced the joint submission on order as set out in paragraph 3 of the Minutes of Settlement, which provides as follows:

- (a) Mr. Panacci shall appear before the Panel to be reprimanded and the fact of the reprimand shall be recorded in the Register of the College;

- (b) The Panel shall direct the Registrar to suspend Mr. Panacci's certificate of registration for a period of twelve (12) months to commence as of April 7, 2006;
- (c) The Panel shall direct the Registrar to place the following specified term, condition, or limitation on Mr. Panacci's certificate of registration:
 - (i) Mr. Panacci shall, before resuming practice, complete an ethics and boundaries course approved by the Registrar and the Registrar shall be satisfied that he has completed successfully; and
 - (ii) Upon the resumption of his practice, Mr. Panacci shall not see female patients except in the presence of another adult female until such time as he provides the Registrar with a report from a psychiatrist stating that there is little or no likelihood that he will repeat the behaviour that gave rise to the findings of professional misconduct against him and the Registrar is satisfied with such report; and
- (d) Mr. Panacci shall pay part of the costs of the College in the amount of \$12,000 by May 1, 2006.

Penalty Decision:

The Panel deliberated and accepted the joint submission on order as set out in paragraph 3 of the Minutes of Settlement, exhibit 10; reviewed and considered the Notice of Hearing, the Joint Submission on Order, exhibits 1 through 11, the oral statement of the complainant, the authorities provided, the legal advice of Ms. Braverman and the submissions of the parties and orders the following penalty and cost order:

- (1) Mr. Panacci shall appear before the Panel to be reprimanded and the fact of the reprimand shall be recorded in the Register of the College; the Panel shall direct the Registrar to suspend Mr. Panacci's certificate of registration for a period of twelve (12) months to commence as of April 7, 2006;
- (2) The Panel shall direct the Registrar to place the following specified term, condition, or limitation on Mr. Panacci's certificate of registration:
 - a. Mr. Panacci shall, before resuming practice, complete an ethics and boundaries course approved by the Registrar and the Registrar shall be satisfied that he has completed successfully; and
 - b. Upon the resumption of his practice, Mr. Panacci shall not see female patients except in the presence of another adult female until such time as he provides the Registrar with a report from a psychiatrist stating

that there is little or no likelihood that he will repeat the behaviour that gave rise to the findings of professional misconduct against him and the Registrar is satisfied with such report; and

- (3) Mr. Panacci shall pay part of the costs of the College in the amount of \$12,000 by May 1, 2006.

Reasons for Penalty:

The Panel believes that considering the serious nature of the allegations, the penalty is appropriate to deter Mr. Panacci and other Members from engaging in this type of behaviour in the future. Furthermore, the conditions and restrictions placed upon Mr. Panacci's certificate of registration serve to protect the public from such dishonourable and unprofessional behaviour in the future.

Mr. Panacci waived his right to appeal and the Panel issued the reprimand at the end of the hearing.

DATED THIS 28th DAY OF JUNE, 2006

Fazal A. Khan RO, Chair of the Panel