

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

PANEL:

David Milne, Public Member, Chairperson
Robert Vezina, Appointed Member
Saundra Lawson, Public Member
Ed Viveiros, Elected Member
Thomas (Mike) Smart, Elected Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	REBECCA DURCAN_for
)	College of Opticians of Ontario
- and -)	
)	THOMAS O'REILLY, unrepresented
THOMAS O'REILLY)	
REGISTRATION #C-1217)	
)	LUISA RITACCA
)	Independent Legal Counsel
)	
)	Heard: April 23, 2014

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 23, 2014 at the College of Opticians of Ontario ("the College") at Toronto.

The Member was present and appeared on his own behalf, without counsel, although advised of his right to be represented by counsel in the Notice of Hearing.

The Allegations

The allegations against Thomas O'Reilly (the "Member") as stated in Schedule A of the Notice of Hearing dated January 7, 2014 (Exhibit 1) are as follows:

1. At all material times, Thomas O'Reilly ("Mr. O'Reilly") was a registered optician in Ontario
2. Daniel O'Reilly, who is the brother of Mr. O'Reilly, is also a registered optician in Ontario.

Between 2011 and 2012, Daniel O'Reilly was being investigated by the College of Opticians of Ontario (the "College") for practicing while suspended. As part of that investigation, the College's investigator posed as a patient and attended Spec's Appeal Kitchener on or about October 5, 2011 under the alias, "Emily Hardy". Daniel O'Reilly dispensed glasses to Ms. Hardy and adjusted her glasses.

3. On or about January 30, 2012, Mr. O'Reilly advised the College that, on October 5, 2011, he (not Daniel O'Reilly) was the person who had dispensed glasses to Ms. Hardy and adjusted her glasses.
4. Mr. O'Reilly was not working at Specs Appeal Kitchener on October 5, 2011 when Ms. Hardy was there.
5. The College alleges that Mr. O'Reilly engaged in the following act of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a.) He contravened a provision of the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts (paragraph 26);
 - b.) He contravened a standard of the profession (paragraph 2);
 - c.) He signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement (paragraph 23); 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).
6. Further particulars of the specified allegation of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Mr. O'Reilly in support of the allegations in the Notice of Hearing.

Member's Plea

The Member admitted the allegations contained in the Notice of Hearing. The panel was provided with a written plea inquiry, signed by the Member (Exhibit 2). In addition, the panel conducted a brief examination of the Member and was satisfied that his admissions were informed, voluntary, and unequivocal.

The Evidence

The College provided the panel with an Agreed Statement of Facts (Exhibit 3), which set out the following:

The Member

1. At all material times, Thomas O'Reilly ("the Member") was a member of the College of

Opticians of Ontario ("the College").

2. Daniel O'Reilly ("Daniel") is the Member's brother. Daniel was also a member of the College at all material times.
3. The College was investigating Daniel between 2011 and 2012 for suspected practising while his certificate of registration with the College was under suspension.
4. At approximately 13:25 on or about October 5, 2011, a College investigator assigned to investigate Daniel's conduct attended at Specs Appeal Inc., located at 885 Glasgow Street in Kitchener, Ontario, ("Specs Appeal") posing as a patient under the alias "Emily Hardy". Daniel dispensed eyeglasses to her and adjusted the eyeglasses to fit her face. The College investigator left Specs Appeal at approximately 13:35 p.m.
5. The Member discovered that Daniel was under investigation by the College for possibly having practised while under suspension and wrote a letter to the College dated January 30, 2012, advising that in fact it was him, and not Daniel, who had dispensed glasses to the patient posing as Emily Hardy and adjusted the eyeglasses to fit her face on or about October 5, 2011.
6. The Member was in fact not working at Specs Appeal on or about October 5, 2011 when the College investigator posing as patient Emily Hardy attended there. Business records of Hakim Optical verify that the Member was working at the Kitchener Fairway location of Hakim Optical on October 5, 2011 from 08:57 to 19:00.
7. Once this was brought to the Member's attention by the College, the Member admitted that he had not verified his claim, that he had assisted the patient posing as Emily Hardy, before providing that information to the College.
8. The Member has been cooperative with the investigation into his conduct.
9. The parties agree that the above demonstrates that the Member engaged in professional misconduct pursuant to paragraph 26 (contravened a provision of the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts); paragraph 2 (contravened a standard of the profession; and paragraph 23 (signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement); 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 considered by members as disgraceful, dishonourable or unprofessional); of section 1 of Ontario Regulation 828/93, under the *Opticianry Act, 1991*.

No other evidence was adduced by the parties.

Decision

Having considered the evidence set out in the Agreed Statement of Facts and the parties' submissions that the panel accepted the facts as admitted, and finds that the Member committed acts of professional misconduct as alleged in the Notice of Hearing.

Reasons for Decision

The discipline panel reviewed the evidence set out in the Agreed Statement of Facts (Exhibit #2), relating to the act of providing a misleading statement to the College and dishonourable conduct. College Counsel set out the circumstances of the allegations against the member in question. When the member was given the opportunity to provide any evidence with regards to the allegations set forth by the College against him, he admitted to all the allegations against him.. In particularly, the Member admitted to providing a statement to the College that was misleading, and thus lead the members of the Panel to find the Member guilty of the misconduct as alleged in the Notice of Hearing. .

Penalty

The parties made separate submissions with regard to the appropriate penalty to be imposed in this case. The College argued that an appropriate penalty in this matter would be as follows:

1. The Member shall be required to appear before the panel to be reprimanded;
2. The Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for 8 (eight) weeks, to commence on a date set by the Discipline Committee;
3. The Registrar will suspend 4 (four) weeks of the suspension ordered in paragraph 2 if the Member, in the opinion of the Registrar, successfully registers for the course specified in paragraph I(d) of this order within two weeks of the date of this order. The Member must submit proof of successful registration to the Registrar. Failing this, the final 4 (four) weeks of the suspension will continue to run consecutive to the first 4 (four) weeks for a total continuous suspension of 8 (eight) weeks.
4. 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 complete a course, approved of by the Registrar, in professional ethics and/or jurisprudence, the cost of which shall be borne by the member. This course must be completed no later than one year from the date of this order; and
5. The Member is required to pay the College a portion of its costs in this matter in the amount of \$2000, within 30 (thirty) days of the date of this order.

The Member agreed with every element of the penalty proposed by the College, except he sought a suspension of the full 8 (eight) weeks suspension, upon successful registration and completion of the professional course described by the College. In other words, the Member sought to have the entirety of the proposed suspension, suspended so long as certain terms were met.

Penalty Decision

The panel makes the following order as to penalty:

1. Mr. O'Reilly is to appear before a panel of the Discipline Committee to be reprimanded.
2. The Discipline Committee directs the Registrar to suspend the Member's certificate of registration for eight weeks.
3. The Registrar will suspend eight weeks of the suspension ordered above if the Member, in the opinion of the Registrar, successfully registers and completes a course, approved by the Registrar, in professional ethics and/or jurisprudence, the cost of which shall be borne by the member. In order for the eight week suspension to be suspended, the Member shall successfully register for the course within two weeks of the date of this order and complete the course within twelve months of the date of this order.
4. The Discipline Committee directs the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to complete the course described above within one year of today's date.
5. The Member is required to pay the College a portion of its costs in this matter in the amount of \$2000 within 30 (thirty) days of this Order.

For greater clarity, if the member fails to successfully register for the course as described, within two weeks of the date of this order, then the eight week suspension shall be effective the first Monday following the expiration of the two-week period.

Similarly, if the member fails to successfully complete the course as described, within twelve months of the date of this order, then the eight week suspension shall be effective the first Monday following the expiration of the twelve month period.

Reasons for Penalty Decision

The panel considered the submissions of both the College counsel and the Member on the issue of penalty. The panel felt that a penalty of the 8 week suspension of the Member's license would have been appropriate in the circumstances and would have the appearance that Members who were found guilty, as this Member was would be held to account for their actions. In this instance in order to insure compliance with the re-education portion and as a form of specific deterrent there must be some consequences for the Members actions. As the Member did cooperate with the College in the resolution of the matters at hand, the panel felt that the full penalty would be only a necessary consequence if non-compliance with the remainder of the order were to occur. Further, the penalty ought to be known as a general deterrent that if a member does not live up to their responsibilities as members of the profession and this College, there will be consequences

I, (*name of Chairperson*), sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.

David

May 23, 2014

Chairperson

Date