

3. The Panel of the Discipline Committee of the College of Opticians of Ontario to perform its mandatory duty to give its decision and reasons in writing to the Applicant and the Registrar.

Alternatively,

4. The council or the Executive Committee of the College of Opticians of Ontario to make an order without a hearing to do either:

- a. Direct the Registrar to issue a new certificate of registration to the applicant; or
- b. Direct the Registrar to remove the suspension of the applicants (sic) certificate of registration; or
- c. Direct the Registrar to impose specific terms, conditions or limitations on the applicant's certificate of registration that does not contravene the applicant's Charter Rights or Charter Values.

5. Direct the Registrar to give the complainant in the original proceeding the notice of this application.

Background

On October 31, 2006, the Executive Committee of the College referred specific allegations of professional misconduct against the Member to the Discipline Committee. Also on October 31, 2006 the Executive Committee gave notice to the Member of its intention to suspend his certificate of registration with the College on the basis that the Executive Committee was of the opinion that the conduct of the Member exposed or was likely to expose his patients to harm or injury.

The Member was provided with an opportunity to make written submissions to the Executive Committee with respect to its intention to suspend his certificate of registration and he did so. After considering the Member's written submissions, the Executive Committee, by order dated November 16, 2006 ordered and directed the Registrar to suspend the Member's certificate of registration until the allegations of professional misconduct against the Member have been disposed of by a panel of the Discipline Committee.

Member's Position

The Member submitted that his certificate of registration should be reinstated pursuant to section 72 (1) of the *Health Professions Procedural code*, being Schedule II to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (respectively the "Code" and the "RHPA"). The Member argued that failing to reinstate his certificate or registration would result in harm to the general public. The basis for his argument was that since a number of optical outlets continue to operate

and dispense subnormal eyewear under the banner of "Great Glasses", without an optician, optometrist or physician on staff the public is in danger. The Member did not file any evidence on this point, but instead relied on a number of prior judicial findings confirming this information with respect to Great Glasses. In particular he relied on the findings of Justice Harris in his decision of June 24, 2003, wherein he found the Member to be in breach of the RHPA in that he and the other respondents were dispensing subnormal lens without a prescription.

The Member did not testify, but during his submissions, did assert that he is not the owner of Great Glasses stores but his wife Joanne Bergez is the sole shareholder of the company which owns the stores. The Member asserted that if his certificate or registration was reinstated, he could then resume providing his services as an optician to all of the Great Glasses outlets. Further, the Member suggested that if the panel did not reinstate his certificate of registration, then the College would be liable in law for the "illegal" dispensing that is presently occurring at all of the Great Glasses stores.

College's Position

The College argued that the Member's request for reinstatement of his certificate of registration should be denied. The College's primary argument was that s. 72 (1) does not apply in the Member's case because his suspension resulted from an interim order made by the Executive Committee, pursuant to s. 37 of the Code and not as a result of a decision of the Discipline Committee. Section 37 of the code confers power on the Executive Committee to suspend a Member's certificate of registration on an interim basis in a pending discipline proceeding. Under s. 37(3), an interim suspension "continues in force until the matter is disposed of by a panel of the Discipline Committee". Pursuant to s. 72 of the Code, "person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed." The College argued that the provisions of the code dealing with applications for reinstatement do not apply to interim suspensions that have been ordered by the Executive Committee pending a discipline hearing. As such, the College submitted that the panel has no jurisdiction to grant the reinstatement sought by the Member.

The College also argued that if this panel were to decide it had jurisdiction to consider the request for reinstatement, the application must nonetheless fail on the basis that the arguments advanced by the Member do not justify the removal of the interim suspension. In particular, the College argued that the findings of the Courts, with regard to the Member and his association with Great Glasses, do not support an order for reinstatement:

● Justice Harris in his decision of June 24, 2003 found the Member to be in breach of the RHPA in that he and the other respondents were dispensing subnormal lens without a prescription.

● In a decision dated November 24, 2006, Justice Crane found that the member continued to contravene the RHPA, in direct violation of Justice Harris' decision. Justice Crane found the Member in contempt and ordered the Member to pay a \$1,000,000 fine and that on a go forward basis, the Member and the other respondents would be jointly and severally liable to pay a fine of \$50,000 for each day that they are not in compliance with his order.

● In a decision dated October 10, 2007 Justice Fedak found that the Member continued to be in violation of both the legislation and the prior court orders. Justice Fedak fined the Member and the other respondents \$16,000,000 for failure to abide by the order of Crane J.

● The Court of Appeal upheld the decisions of Justices Crane and Fedak, confirming that the Member was in violation of the previous orders.

Decision

Having reviewed the materials filed and having heard the submissions of the Member and the College, the panel denies the Member's request for reinstatement. The panel does not have jurisdiction to consider the request for reinstatement. The Member's interim suspension arises as a result of an order of the Executive Committee and not as a result of any Discipline proceedings. In any event even if this panel were persuaded that it did have jurisdiction to consider the request, the Member failed to satisfy the panel that there is any public interest reason to reinstate his certificate of registration at this time.

Further, the panel directs that this matter proceed to a hearing on the merits before a panel of the Discipline Committee.

Reasons for Decision

The Panel reviewed the Member's Application of reinstatement as well as correspondence and other related materials provided by the Member and the College. In making its decision, the panel considered the applicability of section 72 and whether or not the Member has established that there has been a change in circumstances to warrant reinstatement. The panel notes, of particular significance, the following:

-The member held a certificate of Registration qualifying him to practise as an Optician until the date of the Executive Committee's interim order. By his own admission, the Member never practised as an Optician, but managed the optical store (Great Glasses) owned by his wife's Company.


-In his decision June 24, 2003, Justice Harris found that illegal dispensing was taking place at Great Glasses stores.

-The Member's Certificate of Registration was not suspended until November 16, 2006. Before this panel, the Member argued that he should be reinstated in order to protect the public from any ongoing harm that may result while Great Glasses continues to operate without the direction of a Registered Optician.

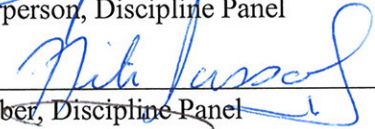
-While waiting for the Appeal to proceed, Counsel for the College wrote to Mr. Bergez on August 16, 2007 proposing that a pre-hearing conference be arranged to schedule dates for the hearing of the Discipline proceeding. In the alternative, Counsel for the College proposed that the hearing not proceed until the Appeal in the Court of Appeal was disposed of. No response was received to the request to schedule a pre-hearing conference and schedule hearing dates. The pre-hearing conference was therefore not scheduled, and the matter was stood down until after the Appeal was heard.

The Panel finds the Member's concerns regarding the safety of clients using Great Glasses' stores to be disingenuous, particularly because of his own admission that he was not practising as an optician with Great Glasses following Justice Harris decision and up to date of the Interim Suspension.

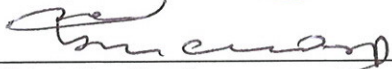
Date: June 17, 2009 Signed:



Chairperson, Discipline Panel



Member, Discipline Panel



Member, Discipline Panel

Member, Discipline Panel

Member, Discipline Panel