

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

PANEL:

Derick Summers RO (Panel Chair)  
Trudy Mauth, Public Member  
John Battaglia RO  
Eve Hoch, Public Member  
Ed Viveiros RO

**BETWEEN:**

COLLEGE OF OPTICIANS OF ONTARIO	)	
	)	<u>Rebecca Durcan</u>
	)	College of Opticians of Ontario
- and -	)	
	)	
	)	<i>No one Appearing for the Member</i>
JOHN EIKELAND	)	
REGISTRATION #C-409	)	
	)	<u>Luisa Ritacca</u>
	)	Independent Legal Counsel
	)	
	)	
	)	Heard: November 6, 2017

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee on November 6, 2017 at the College of Opticians of Ontario (the “College”) at Toronto.

The Member was not present at the commencement of the hearing. The panel waited an additional ten minutes before proceeding so as to give the Member the opportunity to attend. The panel was then provided with evidence that the Member had been properly served with the Notice of Hearing and that he had indicated to College counsel that he did not intend to participate in the hearing. The panel was satisfied on the evidence before it that the Member was aware of the hearing, understood that it would be proceeding and chose not to attend.

In the circumstances, the panel proceeded with the hearing in the Member's absence.

### The Allegations

The College advised the panel that it sought to withdraw a number of allegations originally set out in the Notice of Hearing, dated July 4, 2016. The remaining allegations are as follows:

1. John Eikeland (the "Member") first registered as an optician in Ontario in 1967. At all relevant times, the Member was registered with the College up until May 15, 2015, when he was suspended for failing to pay fees.
2. The Member received his Refraction Designation from the College on July 14, 2008.
3. The Member is not a member of the College of Physicians and Surgeons of Ontario OR the College of Optometrists of Ontario.
4. *Withdrawn.*
5. It is alleged that between 2012 and 2015:
  - a. *Withdrawn*
  - b. *Withdrawn*
  - c. *Withdrawn*
  - d. *Withdrawn*
  - e. the Member permitted or allowed his name to be printed on a prescription pad with the name of a physician (Dr. S) without the permission of the physician (Dr. S);
  - f. the Member did not complete the College Patient Acknowledgement Form for the following patients which he refracted and did not send a copy to the College on a quarterly basis
    - i. JA
    - ii. DA
    - iii. LA
    - iv. MA
    - v. TB
    - vi. PB
    - vii. CEB
    - viii. MC
    - ix. PD

- x. DD
- xi. ND
- xii. EE
- xiii. HG
- xiv. AG
- xv. MH
- xvi. MJ
- xvii. SK
- xviii. WL
- xix. AM
- xx. SM
- xxi. AO
- xxii. MP
- xxiii. VR
- xxiv. DR
- xxv. VRoy
- xxvi. JLS
- xxvii. WS
- xxviii. ST, and/or
- xxix. SZ

g. while performing refractometry, the Member failed to include the following notations: Patient Acknowledgement Form; Results of Refraction and/or Name of the prescriber, date and details of the prescription, in accordance with the College Standard of Practice – Refractometry, in the following patient records:

- i. JA
- ii. DA
- iii. LA
- iv. MA
- v. TB
- vi. PB
- vii. CEB

- viii. MC
- ix. PD
- x. DD
- xi. ND
- xii. EE
- xiii. HG
- xiv. AG
- xv. MH
- xvi. MJ
- xvii. SK
- xviii. WL
- xix. AM
- xx. SM
- xxi. AO
- xxii. MP
- xxiii. VR
- xxiv. DR
- xxv. VRoy
- xxvi. JLS
- xxvii. WS
- xxviii. ST, and/or
- xxix. SZ

6. It is alleged that as a result of the above the Member engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
- a. He contravened a standard of the profession (paragraph 2);
  - b. *Withdrawn*;
  - c. *Withdrawn*;
  - d. *Withdrawn*
  - e. *Withdrawn*;
  - f. *Withdrawn*; and/or

- g. He engaged in conduct or performed an act, in the course of practising opticianry that, having regard to all OF THE circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).

#### 7. *Withdrawn*

#### **The Member's Plea**

As the Member was not present, the Chairperson entered a plea of not guilty on the Member's behalf.

#### **The Evidence**

The College has the onus of proving the allegations on the applicable standard of proof, that being the balance of probabilities. Evidence must always be sufficiently clear, cogent and convincing to satisfy the balance of probabilities standard.

The panel heard evidence from 3 (three) witnesses called by the College; Dr. A. Sebastian, T. Buko, and the College Registrar, F. Khan.

Dr. Sebastian testified by video conferencing, Ms. Buko testified by conference call, and Mr. Khan testified in person. Various exhibits were identified and marked through the course of the witness testimony.

The key evidence of the witnesses may be summarized as follows:

#### **College Witness Dr. A. Sebastian**

Dr. Sebastian testified that he had been contacted by an insurer to confirm several vision claims, which included a "prescription" for refraction seemingly from Dr. Sebastian, but with no signature from him. Upon receiving the documentation collected from the insurer, he found his name, along with Mr. Eikeland's, had been placed at the top of an official looking "prescription"

pad without his knowledge. He testified that he had no current relationship with Mr. Eikeland, though he had performed refractions for him as part of a business relationship approximately fifteen (15) years ago. . He stated explicitly that he did not have a relationship with Mr. Eikeland at the time in question and that he had not given Mr. Eikeland or anyone else permission to use his name on a “prescription” pads used by Mr. Eikeland. He testified that he had no record of the patients who had submitted claims using the “prescription” pads, and that none of them had ever been his patients. Additionally, he explained that the “prescription” pads used by Mr. Eikeland are not the usual prescription pads Dr. Sebastian uses in his own practice. The witness also pointed out that the “prescription” pads used by Dr. Eikeland do not even have space for a doctor’s signature, which you would expect to see on a legitimate pad.

College Witness Tania Buko

Tania Buko is an investigator who was appointed by the Registrar of the College in 2015 to assist in obtaining patient files from Mr. Eikeland. Ms. Buko reviewed the process used when handling and securing the patient records. She was asked and identified the records she obtained from Mr. Eikeland’s office at the time of her investigation. Those records were made an exhibit before the panel.

College Witness Fazal Khan

Fazal Khan is the Registrar for the College. Mr. Khan testified as to the definition of Refraction and the applicable standard, Standard 8, in place to govern how Refracting Opticians may perform this act. Specific attention was drawn to requirement 4, the need for the completion of the Patient Acknowledgement Form for each patient and the requirement to send a copy of this completed form to the College on a quarterly basis. Mr. Khan also explained requirement 7,

which allows an optician to dispense vision devices only where the optician has a prescription from an authorized prescriber. An authorized prescriber includes a medical doctor, ophthalmologist, or optometrist.

Mr. Khan reviewed the patient files obtained by the investigator and testified that none of the 29 (twenty-nine) files had a prescriber listed and that only 1 (one) of the files had a completed Patient Acknowledgment Form. Mr. Khan further testified that Mr. Eikeland had never sent a completed Patient Acknowledgement Form to the College.

### **Decision**

Having considered the evidence and the submissions of College counsel, the panel finds that Mr. Eikeland engaged in professional misconduct in that he contravened a standard of practice of the profession and engaged in conduct that, having all regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

### **Reasons for Decision**

The panel heard testimony from 3 (three) witnesses and reviewed 29 (twenty-nine) patient files. Dr. Sebastian testified that he did not have a business relationship with Mr. Eikeland during the period in question and had not authorized the use of his name on the “prescription” pads Mr. Eikeland was using in his office while performing refractions. Dr. Sebastian appeared angered and offended by the misuse of his name, his reputation, and his profession. He acted quickly upon being made aware of the situation by the insurer and quickly began steps to correct it. He readily testified to a previous relationship with Mr. Eikeland and was sincere when he testified that he had not seen or spoken with Mr. Eikeland for some years. Dr. Sebastian’s sincere

emotion and his expeditiousness in dealing with the situation was compelling. For these reasons, the panel found his testimony to be credible.

The panel concurred with Dr. Sebastian's outrage over the fraudulent use of his profession and his name, finding the actions of Mr. Eikeland to be unprofessional, disgraceful, and dishonourable.

The panel heard testimony from Mr. Khan in regards to the standards necessary to allow a refracting optician to practice refraction in Ontario. The panel found the standard to be clear and unambiguous. The panel notes that the Standard is easily accessible on the College's website and that every optician is expected to be aware of the Standard for the profession in this province. There is no reason why Mr. Eikeland would not have been aware of his obligations for record keeping and disclosure to the College. The uncontradicted evidence clearly established that Mr. Eikeland failed to maintain the Standard and further his persistent disregard for the Standard and his professional obligations as a whole was unprofessional.

The panel then reviewed twenty-nine patient files from Mr. Eikeland's practice. The panel found the sheer volume of patient files to be significant as they clearly pointed to a consistency of unprofessional practice that was concerning and flagrant. Of the twenty-nine files reviewed spanning 3 (three) years (2012 to 2015) none of the files contained a prescriber's name or signature and only one of the files contained a completed Patient Acknowledgment Form. Further, Mr. Khan testified that none of the required documentation for opticians refracting patients had been filed with the College in that 3 (three) year period. The panel found Mr. Khan's testimony to be compelling and credible and finds the actions of Mr. Eikeland in regards to this record keeping to be disgraceful and unprofessional. Additionally, in reviewing the patient files the panel found the files to be incomplete and potentially misleading or harmful to the



patients. The lack of referrals or oversight by a licensed prescriber was particularly troubling as it puts the public at great risk and is contrary to the role of a registered optician. Misleading the public, and placing them at such risk goes beyond dishonourable and unprofessional conduct. The panel finds Mr. Eikeland's actions and disregard for patient safety to be disgraceful and dangerous.

In summary, the panel concluded that Mr. Eikeland knowingly contravened the Standards of Practice for refracting by an optician and engaged in disgraceful, dishonourable, unprofessional and potentially harmful conduct in regards to both his peers and his patients.

## **PENALTY and COSTS**

### **Submissions of the College on Penalty and Costs**

The College sought the following sanctions:

- 1) A verbal reprimand to be delivered within 30 (thirty) days of the date of the panel's order;
- 2) Revocation of Mr. Eikeland's certificate of registration, effective immediately

College counsel argued that the penalty proposed was appropriate as it protected the public interest, and addressed concerns of both specific and general deterrence. Further, counsel emphasized that the previous findings against Mr. Eikeland and his continued misconduct dictated a need for an escalation in the severity of penalty.

In support of its position, the College relied on the Member's previous history with both the College's Complaints Committee and the Discipline Committee. College counsel explained that in 2003, the Member was the subject of a complaint. The Complaints Committee found that the Member had performed refractometry contrary to the College's directive in place at the time.

The matter was not referred to discipline; instead, the Member received a caution from the Committee.

In 2009, the Member was brought before the Discipline Committee for allegations involving breach of the standards of the profession, in that he dispensed eye glasses without a prescription and performed refractometry contrary to the College's prohibition at that time. The Member was found guilty of professional misconduct and given a penalty which included a suspension, reprimand and the imposition of terms, limits and conditions on his certificate.

Finally, in March 2017, another panel of the Discipline Committee found the Member guilty of professional misconduct for contravening a standard of the profession, failing to reply to a registered letter from the College, signing a document that the Member knew or ought to have known was false, and engaging in conduct that would be reasonably regarded by members of the profession as disgraceful dishonourable or unprofessional.

The College acknowledged that the findings made in March 2017 occurred after the events at issue here and so in fairness to the Member we should not use the latter decision to suggest a pattern of continued disregard for decisions by the Discipline Committee.

Ultimately, however, the College submitted that given the conduct and Mr. Eikeland's history and pattern of ungovernability, revocation was the only appropriate penalty in the circumstances.

### **Penalty and Costs Decision**

The panel deliberated and made the following order as to penalty and costs:

1. Mr. Eikeland is required to appear before the panel to be reprimanded within 30 (thirty) days of November 6, 2017;

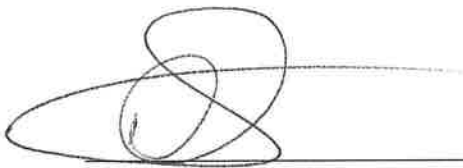
2. The Registrar is directed to revoke Mr. Eikeland's certificate of registration, effective immediately.
3. Mr. Eikeland is required to pay the College a portion of its costs in this matter in the amount of \$10,000 within 3 (three) months of November 6, 2017.

**Reasons for Penalty Decision**

The panel considered what would be an appropriate penalty that addressed the severity of Mr. Eikeland's misconduct. It also considered the repetitious nature of Mr. Eikeland's misconduct and his continued disregard for the College standards and public well-being.

The panel found that the position of the College on penalty addresses the primary mandate of the College to protect the public, as well as to maintain the standards of practice for the profession and to ensure public confidence in the integrity of members of this profession.

I, **Derick Summers**, 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:



Derick Summers, Chairperson and RO  
Trudy Mauth, Public Member  
John Battaglia RO  
Eve Hoch, Public Member  
Ed Viveiros RO



Date