

**DISCIPLINE PANEL
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

PANEL:

Bryan Todd, Chair
Kevin Cloutier
Robin Dickinson
Gordon White
Jacalyn Cop-Rasmussen

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan</u>
)	College of Opticians of Ontario
)	
- and -)	
)	
JOHNNY CHOW)	<u>Johnny Chow</u> , acting in person
)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel

Heard: June 10, 2019

DECISION AND REASONS

This matter came for hearing before a panel of the Discipline Panel on June 10, 2019 at the College of Opticians of Ontario (the "College") at Toronto.

The panel's full decision and reasons are as set out below.

The allegations against the Member as stated in the Notice of Hearing dated October 24, 2018 are as follows:

STATEMENT OF SPECIFIED ALLEGATIONS

The Member

1. Johnny Chow ("Mr. Chow") has been a member of the College since 1997. Quality Assurance Program

2. Pursuant to s. 82(1) of the Health Professions Procedural Code (the "Code") and ss. 9, and 10 of Regulation 219/94 (the "General Regulation"), members of the College are required to comply with the requirements of the College's Quality Assurance program.
3. The College's Quality Assurance Program includes (but is not limited to) a Competency Review Evaluation (CRE). Certain members are randomly selected to participate in the CRE. The CRE involves (but is not limited to) the member submitting a copy of their annual continuing education and professional development activities (the "Professional Portfolio").
4. On or about February 10, 2017, the Quality Assurance Committee notified Mr. Chow, by e-mail, that he had been randomly selected to participate in the CRE and to submit his Professional Portfolio no later than March 31, 2017.

Professional Portfolio

5. On or about March 24, 2017, the Quality Assurance Committee contacted Mr. Chow, by email reminding him of the March 31, 2017 due date for the Professional Portfolio.
6. On or about April 7, April 24 and/or July 12, 2017, the Quality Assurance Committee contacted Mr. Chow by email, regular mail and/or registered mail asking him to submit the Professional Portfolio.
7. As of today's date the Professional Portfolio has not been received by the Quality Assurance Committee.

Acts of Professional Misconduct

8. As a result of the above, it is alleged that Mr. Chow engaged in professional misconduct pursuant to s. 51(1)(c) of the Code, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:
 - a. He contravened a standard of practice of the profession (paragraph 2);
 - b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
 - c. He contravened any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 9, and/or s. 10, of the General Regulation (paragraph 26); 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).
9. In addition, it is alleged that Mr. Chow engaged in professional misconduct pursuant to s. 51(b.0.1) of the Code as he failed to co-operate with the Quality Assurance Committee.

The Evidence

The College filed an Agreed Statement of Facts (Exhibit #2), which provided as follows:

The Member

1. At all material times, Johnny Chow (“Mr. Chow”) was a registered optician in Ontario.
2. At all material times, Mr. Chow’s email address on file with the College was Turbo3z@rogers.com.

Quality Assurance Program

3. Pursuant to section 82(1) of the *Health Professions Procedural Code* (the “Code”) and sections 9 and 10 of Ontario Regulation 219/94: General, members of the College are required to comply with the requirements of the College’s Quality Assurance program. Attached as **Tab “1”** is a list of these and other relevant statutory provisions.
4. The College’s Quality Assurance Program includes (but is not limited to) the following components:
 - a. **Professional Portfolio:** All members are required to participate in the Professional Portfolio each year. The Professional Portfolio includes evidence of annual continuing education and professional development activities. These include accredited and self-selected credits, and self-reflection which ensures members remain competent and current. All members are required to retain their Professional Portfolio for six years.
 - b. **Competency Review Evaluation (“CRE”):** Certain members are randomly selected to participate in the CRE. The CRE involves the member either submitting a copy of their Professional Portfolio or submitting a copy of their Professional Portfolio and engaging in a Multi-Source Feedback.
 - i. **Multi-Source Feedback (“MSF”):** The MSF involves colleagues and patients completing feedback surveys which help assess a member’s practice. The total amount of required surveys is fifteen (15).

Mr. Chow Failed to Participate in the CRE as Required

5. On February 10, 2017, the Quality Assurance Committee notified Mr. Chow by email that he had been randomly selected to participate in the CRE and to submit his Professional Portfolio no later than March 31, 2017. Attached as **Tab “2”** is a copy of this correspondence.

6. On February 17, 2017, the College sent Mr. Chow a CRE package by courier.
7. On March 24, 2017, the Quality Assurance Committee contacted Mr. Chow by email reminding him of the March 31, 2017 deadline for the Professional Portfolio. Attached as **Tab “3”** is a copy of this correspondence.
8. On April 7, 2017, the Quality Assurance Committee contacted Mr. Chow by email asking him to submit the Professional Portfolio. Attached as **Tab “4”** is a copy of this correspondence.
9. On April 24, 2017, the Quality Assurance Committee contacted Mr. Chow by email and by regular mail asking him to submit the Professional Portfolio. Attached as **Tab “5”** is a copy of this correspondence.
10. On July 12, 2017, the Quality Assurance Committee contacted Mr. Chow by email and by registered mail asking him to submit the Professional Portfolio. The letter sent by registered mail was not claimed by Mr. Chow and was returned to the College. The email was returned as undeliverable to the email address Turbo3z@rogers.com. Attached as **Tab “6”** is a copy of this correspondence.
11. On November 27, 2017, the College contacted Mr. Chow by email and by regular mail advising him that the matter was referred to the Inquiries, Complaints, and Reports Committee (“ICRC”). Attached as **Tab “7”** is a copy of this correspondence.

Admission of Professional Misconduct

12. By this document, Mr. Chow admits to the truth of the facts referred to in paragraphs 1 to 11 above (the “Agreed Facts”).
13. As a result of the Agreed Facts, it is agreed that Mr. Chow engaged in professional misconduct pursuant to section 51(1)(c) of the Code, as set out in the following paragraphs of section 1 of Ontario Regulation 828/93: Professional Misconduct:
 - a. He contravened a standard of practice of the profession (paragraph 2);
 - b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
 - e He contravened any provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, namely section 82(1) of the Code, and sections 9 and 10 of the General Regulation (paragraph 26); and
 - c. 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).

14. In addition, it is agreed that Mr. Chow engaged in professional misconduct pursuant to section 51(b.0.1) of the Code as he failed to cooperate with the Quality Assurance Committee.
15. By this document Mr. Chow states that:
- a. He understands fully the nature of the allegations against him;
 - b. He has no questions with respect to the allegations against him;
 - c. He admits to the truth of the facts contained in this Agreed Statement of Facts and Admission of Professional Misconduct and that the admitted facts constitute professional misconduct;
 - d. Mr. Chow understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
 - e. He understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
 - f. He understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication or website of the College;
 - g. He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
 - h. He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice and that he has had the opportunity to receive such advice.

Decision

The Panel concluded that the Member engaged in professional misconduct as set out in the Notice of Hearing.

Reasons for Decision

The panel has accepted the Agreed Statement of Facts as filed by submitted by the College of Opticians of Ontario and the Member, Johnny Chow.

The panel deliberated and found that the facts admitted, together with the Member's plea amounted to professional misconduct.

His failure to respond to the Quality Assurance Committee's request was problematic. Members of the College understand that it is critical and a mandatory component of membership and self-regulation to engage with the Quality Assurance Committee, as required and requested. Failing to do so is a breach of the standards and professional misconduct as defined in the Code.

It appeared from the facts admitted and Mr. Chow's oral submissions that he changed his email address without updating the College. As a result, he failed to respond in a timely fashion to the communications he was sent by the Quality Assurance Committee and the College.

Members of this College have an obligation to respond to College inquires and to, in particular, participate fully in reviews/audits by the Quality Assurance Committee. Members are obliged to ensure that the College has up to date contact information for them. Without up to date contact information, the College is unable to fulfil its obligations. The public must have confidence that the College can regulate its members and that its members accede to and respect the College's jurisdiction over them.

Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submission as to Penalty and Costs provides as follows:

1. Mr. Chow is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing.
2. The Registrar is directed to suspend Mr. Chow's Certificate of Registration for a period of three months, commencing on a date to be selected by the Registrar, two months of which shall be remitted if Mr. Chow complies with the terms of paragraphs 3(a) and 3(b) below within three months of the date of this order.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Chow's Certificate of Registration, all of which are at his expense:
 - a. Requiring Mr. Chow to review all College standards and provide written confirmation of review to the Registrar within three months of the date of this order;
 - b. Requiring that Mr. Chow unconditionally pass the ProBe course in ethics within five months of the date of this order;
 - c. Requiring that Mr. Chow successfully complete, to the satisfaction of the Registrar, up to two (to be determined by the Registrar) practice inspections, by an inspector, to be pre-approved by the Registrar, the cost of which shall not exceed \$500.00 per inspection, within four months following the lifting of the suspension; and
 - d. Requiring that Mr. Chow participate in and successfully complete the 2019 CRE.

4. For greater certainty, Mr. Chow's obligation to comply with the proposed terms, conditions and limitations on his Certificate of Registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Mr. Chow is required to pay to the College costs in the amount of \$3,500.00 within four months of the date of this Order. The Registrar is authorized to impose an installment plan to ensure regular and consistent payment of the costs order.

Penalty and Costs Decision and Reasons

The panel accepted the Joint Submission and accordingly ordered:

1. Mr. Chow is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing.
2. The Registrar is directed to suspend Mr. Chow's Certificate of Registration for a period of three months, commencing on a date to be selected by the Registrar, two months of which shall be remitted if Mr. Chow complies with the terms of paragraphs 3(a) and 3(b) below within three months of the date of this order.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Chow's Certificate of Registration, all of which are at his expense:
 - a. Requiring Mr. Chow to review all College standards and provide written confirmation of review to the Registrar within three months of the date of this order;
 - b. Requiring that Mr. Chow unconditionally pass the ProBe course in ethics within five months of the date of this order;
 - c. Requiring that Mr. Chow successfully complete, to the satisfaction of the Registrar, up to two (to be determined by the Registrar) practice inspections, by an inspector, to be pre-approved by the Registrar, the cost of which shall not exceed \$500.00 per inspection, within four months following the lifting of the suspension; and
 - d. Requiring that Mr. Chow participate in and successfully complete the 2019 CRE.
4. For greater certainty, Mr. Chow's obligation to comply with the proposed terms, conditions and limitations on his Certificate of Registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Mr. Chow is required to pay to the College costs in the amount of \$3,500.00 within four months of the date of this Order. The Registrar is authorized to impose an installment plan to ensure regular and consistent payment of the costs order.

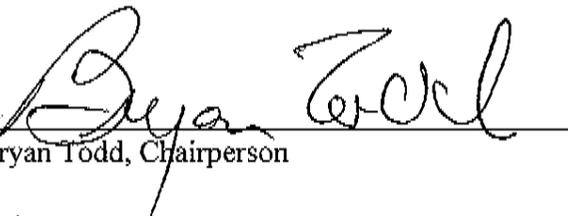
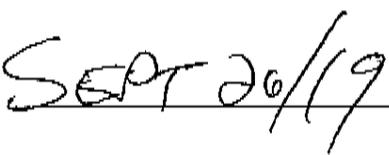
The panel understands that it should not depart from a joint submission unless to accept it would bring the administration of this process into disrepute or otherwise be contrary to the public interest.

We find the submission to be fair and to reflect the seriousness of the professional misconduct that the Member acknowledges as having occurred.

The panel in Mr. Chow's hearing was satisfied that the penalty is reasonable. Although not entered in the Agreed Statement of Facts, Mr. Chow's made the Panel aware of his personal circumstances at the time, which make the suspension provisions of the penalty proposed reasonable in the circumstances. The panel is satisfied that Mr. Chow did not intend to ignore the request for the Quality Assurance Committee and as such concludes that the penalty imposed appropriately addresses the principles governing penalty which include public protection, general deterrence and specific deterrence.

At the end of the hearing, the panel delivered its Reprimand to the Member, who waived his right to appeal. The Reprimand is found at Schedule "A" attached to these Reasons.

I, Bryan Todd, 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:

Bryan Todd, Chairperson

Date

Kevin Cloutier
Robin Dickenson
David Gordon White
Jacalyn Cop-Rasmussen

Schedule “A”

Reprimand

We have deliberated. The pane will order penalty and costs as set out in the Joint Submission.

Mr. Chow, are you prepared to waive your right to appeal receive your reprimand? As you know, Mr. Chow, as part of its penalty order this Discipline panel has ordered you that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct in a number of ways.

We also want to make it clear to you that while the penalty that this panel has imposed upon you is a fair penalty, a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

Thank you for attending. We are adjourned. .