

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

PANEL:

Derick Summers, Chair
John Battaglia
Omar Farouk
David Milne
Ed Viveiros

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan</u>
)	College of Opticians of Ontario
- and -)	
)	
WAJAHATULLAH MOHAMMED)	<u>Member</u> , Self Represented
)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: April 1, 2019

DECISION AND REASONS

This matter came for hearing before a panel of the Discipline Panel on April 1, 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 December 6, 2018 are as follows:

STATEMENT OF SPECIFIED ALLEGATIONS

The Member

1. At all relevant times, Wajahatullah Mohammed (“the Member”) has been a member of the College of Opticians of Ontario (the “College”).
2. At all relevant times, the Member owned and worked at Nema Optical in Oshawa (the “Clinic”).

3. The Member employed and trained the employees at the Clinic.
4. In or around 2016, an insurer had concerns with the quantum of claims coming from the Clinic so the insurer sent in undercover investigators posing as patients (“Patient A” and “Patient C”).

Patient A

5. On or about July 14, 2016, Patient A attended at the Clinic. Optician B, who was an employee of the Member, did the following:
 - a. Issued an invoice for an optometrist appointment for \$70.00 that had not yet taken place; and/or
 - a. Sold Patient A non-prescription sunglasses but issued a false account that indicated prescription sunglasses had been dispensed.

Patient A and Patient B

6. On or about August 11, 2016, Patient A returned to the Clinic. Patient A asked Optician B if he could sell Patient A non-prescription sunglasses for his wife (“Patient B”). Optician B, who was an employee of the Member, did the following:
 - a. Advised Patient A that he could submit a claim with the insurer for Patient B’s eyeglasses electronically;
 - b. In response to Patient A telling Optician B that Patient A would advise the insurer (if asked) that an optometrist appointment had occurred for Patient B, Optician B replied, “Yeah, yeah. That’s what I’m gonna do. I have to lie”;
 - c. Sold Patient A non-prescription sunglasses for Patient B but issued a false account that indicated prescription sunglasses had been dispensed;
 - d. Indicated on the false account that Patient B had received an optometrist appointment when no such appointment occurred;
 - e. Created a false prescription;
 - f. Attempted to submit the account with the insurer in the presence of Patient A; and/or
 - g. Told Patient A at the end of the transaction, “I take care of you. You take care of me. Easy.”
7. In his interactions with Patient A, Optician B, who was an employee of the Member, contravened the professional standards of practice for opticians in the province of Ontario, including:
 - a. Standard 2: Professional Conduct;
 - b. Standard 3: Dispensing of Appropriate Optical Devices; and/or

- c. Standard 5: Record Keeping.
8. The Member created, or permitted the creation of, false records relating to Patient A and/or Patient B including Lab Order Forms and Prescriptions.
 9. The Member condoned and/or permitted his employees to engage in fraudulent behaviour.

Patient C

10. On or about July 5, 2016, Patient C attended at the Clinic. Employee 1, who was an employee of the Member, advised Patient C that she could obtain non-prescription eyeglasses and the Clinic would bill them as prescription eyeglasses to her insurer.
11. On or about July 7, 2016, Patient C returned to the Clinic. The Member did the following:
 - a. Advised Patient C that they would submit the claims for two pairs of non-prescription eyeglasses electronically to the insurer after she completed the optometrist appointment;
 - b. When advised that the optometrist appointment indicated Patient C did not require prescription eyeglasses, the Member advised Patient C that he would bill the insurer \$420 “and see what they pay”;
 - c. Sold Patient C two pairs of non-prescription sunglasses but issued a false account that indicated prescription sunglasses had been dispensed; and/or
 - d. Electronically submitted the false claim to the insurer.
12. On or about October 21, 2016, the Member did the following:
 - a. Contacted Patient C and asked her to sign an electronic consent form as he was being audited by the insurer; and/or
 - b. Advised Patient C that “I am saying I made you eye glasses.”
13. In his interactions with Patient C, the Member contravened the professional standards of practice for opticians in the province of Ontario, including:
 - a. Standard 2: Professional Conduct;
 - b. Standard 3: Dispensing of Appropriate Optical Devices; and/or
 - c. Standard 5: Record Keeping.
14. The Member created, or permitted the creation of, false records relating to Patient C.

15. The Member condoned and/or permitted his employees to engage in fraudulent behaviour.

Settlement with insurer

16. In or around May 2017, the Member reached an agreement with the insurer for “billing irregularities” and reimbursed the insurer for approximately \$200,000.

Allegations of Professional Misconduct

17. As a result of the above, it is alleged that the Member engaged in professional misconduct pursuant to s. 51(1)(c) of the Health Professions Procedural Code as defined in the following paragraphs of Ontario Regulation 828/93, section 1:
 - a. Paragraph 2 - He contravened a standard of practice of the profession;
 - b. Paragraph 21 – Falsifying a record relating to the member’s practice;
 - c. Paragraph 23 – Signing or issuing, in the member’s professional capacity, a document that the member knows or ought to know contains a false or misleading statement;
 - d. Paragraph 24 - Submitting an account or charge for services that the member knows or ought to know is false or misleading; and/or
Paragraph 28 - 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.

The Member’s Plea

The Member pleaded no contest to all of the allegations.

Rule 11.02 of the Discipline Committee’s Rules of Procedure provides in part that where a Member pleads no contest to an allegation, the Panel can accept as correct the facts alleged against the Member for the purposes of the discipline proceedings only.

The Panel conducted an oral plea inquiry to satisfy itself that the Member’s plea of no contest was voluntary, informed and unequivocal. Having done so, the Panel was content to accept the Member’s plea.

The Evidence

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

The Member

1. At all relevant times, Wajahatullah Mohammed (“the Member”) has been a member of the College of Opticians of Ontario (the “College”).
2. At all relevant times, the Member owned and worked at Nema Optical in Oshawa (the “Clinic”). The Clinic is now permanently closed.
3. The Member employed and trained the employees at the Clinic.
4. In or around 2016, an insurer had concerns with the quantum of claims coming from the Clinic so the insurer sent in undercover investigators posing as patients (“Patient A” and “Patient C”).

Patient A

5. On or about July 14, 2016, Patient A attended at the Clinic. Optician B, who was an employee of the Member, did the following:
 - a. Issued an invoice for an optometrist appointment for \$70.00 that had not yet taken place; and
 - b. Sold Patient A non-prescription sunglasses but issued a false account that indicated prescription sunglasses had been dispensed.

Patient A and Patient B

6. On or about August 11, 2016, Patient A returned to the Clinic. Patient A asked Optician B if he could sell Patient A non-prescription sunglasses for his wife (“Patient B”). Optician B, who was an employee of the Member, did the following:
 - a. Advised Patient A that he could submit a claim with the insurer for Patient B’s eyeglasses electronically;
 - b. In response to Patient A telling Optician B that Patient A would advise the insurer (if asked) that an optometrist appointment had occurred for Patient B, Optician B replied, “Yeah, yeah. That’s what I’m gonna do. I have to lie”;
 - c. Sold Patient A non-prescription sunglasses for Patient B but issued a false account that indicated prescription sunglasses had been dispensed;
 - d. Indicated on the false account that Patient B had received an optometrist appointment when no such appointment occurred;
 - e. Created a false prescription;
 - f. Attempted to submit the account with the insurer in the presence of Patient A; and
 - g. Told Patient A at the end of the transaction, “I take care of you. You take care of me. Easy.”

7. In his interactions with Patient A, Optician B, who was an employee of the Member, contravened the professional standards of practice for opticians in the province of Ontario, including:
 - a. Standard 2: Professional Conduct;
 - b. Standard 3: Dispensing of Appropriate Optical Devices; and
 - c. Standard 5: Record Keeping.
8. The Member permitted the creation of, false records relating to Patient A and Patient B including Lab Order Forms and Prescriptions.
9. The Member condoned and permitted his employees to engage in fraudulent behaviour.

Patient C

10. On or about July 5, 2016, Patient C attended at the Clinic. Employee 1, who was an employee of the Member, advised Patient C that she could obtain non-prescription eyeglasses and the Clinic would bill them as prescription eyeglasses to her insurer.
11. On or about July 7, 2016, Patient C returned to the Clinic. The Member did the following:
 - a. Advised Patient C that they would submit the claims for two pairs of non-prescription eyeglasses electronically to the insurer after she completed the optometrist appointment;
 - b. When advised that the optometrist appointment indicated Patient C did not require prescription eyeglasses, the Member advised Patient C that he would bill the insurer \$420 “and see what they pay”;
 - c. Sold Patient C two pairs of non-prescription sunglasses but issued a false account that indicated prescription sunglasses had been dispensed; and
 - d. Electronically submitted the false claim to the insurer.
12. On or about October 21, 2016, the Member did the following:
 - a. Contacted Patient C and asked her to sign an electronic consent form as he was being audited by the insurer; and
 - b. Advised Patient C that “I am saying I made you eye glasses.”
13. In his interactions with Patient C, the Member contravened the professional standards of practice for opticians in the province of Ontario, including:
 - a. Standard 2: Professional Conduct;
 - b. Standard 3: Dispensing of Appropriate Optical Devices; and
 - c. Standard 5: Record Keeping.

14. The Member permitted the creation of false records relating to Patient C.
15. The Member condoned and permitted his employees to engage in fraudulent behaviour.

Settlement with insurer

16. In or around May 2017, the Member reached an agreement with the insurer for “billing irregularities” and reimbursed the insurer for approximately \$200,000.

Plea of No Contest

17. The Member pleads no contest to the following allegations of professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code* as defined in the following paragraphs of Ontario Regulation 828/93, section 1:
 - a. Paragraph 2 - Contravening a standard of practice of the profession;
 - b. Paragraph 21 – Falsifying a record relating to the member’s practice;
 - c. Paragraph 23 – Signing or issuing, in the member’s professional capacity, a document that the member knows or ought to know contains a false or misleading statement;
 - d. Paragraph 24 - Submitting an account or charge for services that the member knows or ought to know is false or misleading; and
 - e. Paragraph 28 - Engaging in conduct or performing 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.
18. By entering a plea of no contest to the allegations, the Member consents to the following:
 - a. That the Discipline Committee can accept as correct the facts alleged against him on the relevant allegations for the purposes of the proceeding only;
 - b. That the Discipline Committee can accept those facts constitute professional misconduct for the purposes of the proceeding only ; and
 - c. That the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.
19. The Member 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 Uncontested Facts and Plea of No Contest submitted by the College of Opticians of Ontario and the Member, Wajahatullah Mohammed.

The panel deliberated and found that the College satisfied it on a balance of probabilities that the Member engaged in professional misconduct as alleged in the Notice of Hearing.

As outlined in paragraph #17, Exhibit #2, the Member pleaded no contest to contravening a standard of practice, falsifying records, signing documents containing false information, submitting false accounts or charges and engaging in conduct that would be regarded as dishonourable and unprofessional.

In so accepting the Agreed Statement of Uncontested Facts and Plea of No Contest the panel makes a finding against the Member of professional misconduct.

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:

The College of Opticians of Ontario (the “College”) and Wajahatullah Mohammed (“Mr. Mohammed”) agree and jointly submit that the following would be an appropriate order as to penalty and costs in this matter:

1. Mr. Mohammed is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing.
2. The Registrar is directed to immediately suspend Mr. Mohammed’s Certificate of Registration for a period of six (6) months.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Mohammed’s Certificate of Registration, all of which are at his expense:
 - a. Requiring Mr. Mohammed to successfully complete the College’s jurisprudence course (Chapters 1 and 2), within five months of the date of this order;
 - b. Requiring that Mr. Mohammed unconditionally pass the ProBe course in ethics within five months of the date of this order; and

c. Requiring that Mr. Mohammed successfully complete, to the satisfaction of the Registrar, up to three (to be determined by the Registrar) practice inspections, by an inspector, to be pre-approved by the Registrar, within six months following the lifting of the suspension; and

4. Mr. Mohammed is required to pay to the College costs in the amount of \$7,000.00 within six 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 accepts the Joint Submission and accordingly orders:

1. Mr. Mohammed is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing.

2. The Registrar is directed to immediately suspend Mr. Mohammed's Certificate of Registration for a period of six (6) months.

3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Mohammed's Certificate of Registration, all of which are at his expense:

a. Requiring Mr. Mohammed to successfully complete the College's jurisprudence course (Chapters 1 and 2), within five months of the date of this order;

b. Requiring that Mr. Mohammed unconditionally pass the ProBe course in ethics within five months of the date of this order; and

c. Requiring that Mr. Mohammed successfully complete, to the satisfaction of the Registrar, up to three (to be determined by the Registrar) practice inspections, by an inspector, to be pre-approved by the Registrar, within six months following the lifting of the suspension; and

4. Mr. Mohammed is required to pay to the College costs in the amount of \$7,000.00 within six 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.

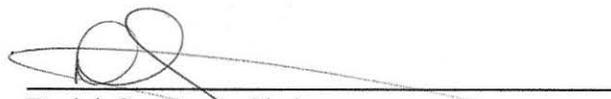
The panel understands that it should not depart from a joint submission unless to accept it would bring the administration of this process into disrepute or otherwise be contrary to the public interest.

The panel has reviewed the Joint Submission on Penalty and Costs and accepts it. In reviewing this submission the panel has also reviewed the Brief of Authorities Exhibit 1 pages 7 to 38 and as such we have examined similar instances of professional misconduct. We have considered that the Member appears to have cooperated with the College of Opticians investigation. We have

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

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, 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

May 17. 19
Date

John Battaglia
Omar Farouk
David Milne
Ed Viveiros

Schedule “A”

Reprimand

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

Mr. Mohammed, are you prepared to waive your right to appeal receive your reprimand? As you know, Mr. Mohammed, 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.

