

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

PANEL: David Milne, Public Member, Chair
Stephen Kinsella, Public Member
Henry Wiersema, Public Member
Janice Mallette, RO
Derick Summers, RO

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Anastasia Hountalas</u> for the
)	College of Opticians of Ontario
- and -)	
)	<u>Chris Trivisonno</u> , for the Registrant
)	
REGAN CHARLES MITCHELL)	
)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: May 13, 2024

DECISION AND REASONS

This matter came for a motion hearing before a Panel of the Discipline Committee of the College of Opticians of Ontario (the "College") on May 31, 2023. The matter was heard by way of video conference.

At the outset of the hearing, Mr. Mitchell's counsel confirmed that he would not be attending the hearing, but that he had the authority to proceed in Mr. Mitchell's absence.

At the outset of the hearing, the College brought a motion seeking an indefinite adjournment of the allegations against Mr. Mitchell. The College advised the Panel that Mr. Mitchell had entered into an Acknowledgement and Undertaking ("Undertaking") to, among other things, resign as a member of the College and to never seek to re-apply in the future. The College's motion was brought with the consent and support of Mr. Mitchell.

At the conclusion of the hearing, the Panel advised the College that it would grant the requested order. The Panel's reasons for granting the motion are set out in brief below.

The Allegations

The allegations against the Registrant Regan Charles Mitchell as stated in the Notice of Hearing dated December 16, 2022 are as follows:

STATEMENT OF SPECIFIED ALLEGATIONS

The Registrant

1. *At all material times, Regan Mitchell (the "Registrant") was a registered optician in Ontario.*
2. *The Registrant holds a Refraction Designation from the College.*

Refraction and Dispensing

3. *On or about April 24, 2013, the Registrant signed an undertaking to the College agreeing not to dispense optical appliances without a prescription from an optician or physician (the "undertaking").*
4. *It is alleged that between in or about May 2013 and 2021, the Registrant routinely performed refractions on patients contrary to the undertaking and/or the required criteria for refraction by doing one or more of the following:*
 - a. *When the Registrant determined that the results of a refraction were "normal", he dispensed optical appliances to the patient on the basis of his refractions without a prescription, authorization and/or referral from an authorized prescriber; and/or*
 - b. *When the Registrant determined that the results of a refraction were "abnormal", he referred the patient to an ophthalmologist without providing a copy of the results of the refraction.*

Record Keeping

5. *It is further alleged that between in or about May 2013 and 2021, the Registrant failed to retain a copy of invoices and/or receipts for services and/or optical appliances as required.*

Allegations of Professional Misconduct

6. *As a result of the above, it is alleged that the Registrant engaged in the following acts of professional misconduct as set out in section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the Regulated Health Professions Act, 1991, and pursuant to one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:*
 - a. *Paragraph 2 (Contravening a standard of practice of the profession, more particularly the standards on refraction and/or record keeping in force at the time);*
 - b. *Paragraph 26 (Contravening any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, more particularly, section 5(1) of the Opticianry Act, 1991); and/or*
 - c. *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).*

Request for Indefinite Adjournment

The College submitted that in exchange for Mr. Mitchell's Undertaking, it was prepared to seek an indefinite adjournment of a hearing into the allegations as set out in the Notice of Hearing.

On November 13, 2023, the Registrant signed an Acknowledgment and Undertaking providing, among other things, that he:

- Undertakes to cease engaging in refraction effective immediately.
- Resign and surrender his membership in and certificate of registration with the College immediately.
- Never re-apply for membership, registration, licensure, or similar status as an optician with the College or any other regulatory body for opticians in Canada.
- Undertakes to immediately post a sign in the main reception area of his optical store and any other clinic that he owns or works, which notifies the public that Mr.

Mitchell is a member of staff and as a member of staff he is prohibited from performing opticianry acts and using the title "doctor" or "optician".

- Acknowledges that only an authorized dispenser (i.e. optician, optometrist, physician) can dispense prescription eyewear at his clinic and that all dispensing must be based on a valid prescription.
- Acknowledges that should he seek to re-apply for membership or similar status with the College or any other regulatory body for opticians in Canada in the future, the College will be entitled to rely on his Acknowledgement and Undertaking in any registration or other similar proceeding as reason to deny his application.
- Upon resignation, is not entitled to use the title "optician" or "ophthalmic dispenser" or any variation, abbreviation or equivalent in another language, or hold himself out as a person who is qualified to practise in Ontario as an optician or in a speciality of opticianry.
- Understands that should he violate any part of his Acknowledgement and Undertaking, the College is entitled to re-institute the prosecution of the allegations set out in the Notice of Hearing and will be entitled to pursue allegations for a breach of her Acknowledgement and Undertaking.
- Acknowledges that the College is required to include the fact of this Acknowledgement and Undertaking on the College's public register, and that further the College will post a copy of the Undertaking, including all attachments, on the College's public register.
- Undertakes to pay \$2000.00 in costs within thirty (30) days of the date of the Undertaking.

The College and Mr. Mitchell submitted that based on his Acknowledgement and Undertaking, it was appropriate for the Panel to grant the indefinite adjournment as sought.

Decision and Analysis

The issue before this Panel is whether it would be in keeping with the College's mandate to act in and protect the public interest to allow the motion for an indefinite adjournment, considering Mr. Mitchell's resignation and undertaking, rather than require the parties to

participate in a full hearing at which the allegations of professional misconduct would be adjudicated.

The Panel is satisfied that Mr. Mitchell's resignation and undertaking not to reapply will protect the public. As College counsel submitted, the undertaking and agreement not to reapply represents a greater consequence for Mr. Mitchell than could be imposed at a full hearing, since, even if his registration was revoked at a full hearing, he would be entitled to reapply in the future.

This process has been transparent. The hearing was open to the public and the order sought will be posted on the College's public register, together with Mr. Mitchell's Undertaking these reasons.

The profession and the public will also avoid the costs of a full hearing.

The Panel is satisfied that the proposed disposition is consistent with the public interest. Accordingly, the Panel orders that the disciplinary proceedings against the Registrant, as set out in the Notice of Hearing are adjourned indefinitely.

I, **David Milne**, 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:



David Milne, Public Member and Panel Chair

Date: May 28, 2024

Issued:

Stephen Kinsella, Public Member
Henry Wiersema, Public Member
Janice Mallette, RO
Derick Summers, RO