

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

PANEL: Fazal Khan, Chair
 Gloria Baltazar
 Derick Summers
 Librado Ibe Jr.
 Marilyn Fron

BETWEEN:)	
)	
COLLEGE OF OPTICIANS)	Robert Cosman, Nadia Jandali and
OF ONTARIO)	Melisse Willems for the College of
)	Opticians of Ontario
- and -)	
)	
)	Bruce Bergez, in person
)	
BRUCE BERGEZ, C-1192)	
)	
)	
)	Christopher Wirth, Independent
)	Legal Counsel
)	
)	Heard: October 28 and 29, 2008;
)	November 17 and 18, 2008 and
)	January 8 and 9, 2009
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee of the College of Opticians of Ontario (the "College") on October 28, 2008 at Toronto.

The Allegations

The allegations against Bruce Bergez ("Mr. Bergez") in the Notice of Hearing dated October 22, 2007 are as follows:

IT IS ALLEGED that you have committed acts of professional misconduct as defined in subsection 51 of the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18 and as defined in section 1, paragraphs 1, 2, 4, 5, 26, 27, 28 and 29 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c.34 (the "Act"), in that you:

- (a) permitted, counselled or assisted persons who are not registered under the Act to perform an act that should be performed by a member, namely, prescribing and/or dispensing for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers;

- (b) obstructed a Complaints Committee investigation by not allowing an investigator appointed by the Registrar under s. 75 of the Code to obtain patient records and or information from a witness;

- (c) engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

THE PARTICULARS of these allegations are that you committed the above-stated acts of professional misconduct:

1. As described in the complaint from Green Shield Canada dated July 21, 2006, and supporting materials;
2. As described in the complaint from Manulife Financial dated June 14, 2006, and supporting materials;
3. As described in the complaint of Julie Bettiol dated August 14, 2006, and supporting materials;
4. As described in the complaint of Jie Chao dated August 14, 2006, and supporting materials;
5. As described in the complaint of Anne Moore dated October 18, 2006, and supporting materials;
6. As described in the complaint of Sharon Ang dated August 9, 2006, and supporting materials;
7. As described in the complaint of Gail Carriere dated October 24, 2006, and supporting materials;
8. As described in the complaint of Darlene Smith dated November 3, 2006, and supporting materials;
9. As described in the complaint of Janet Power dated November 29, 2006, and supporting materials;
10. As described in the complaint from Green Shield Canada dated February 12, 2007, and supporting materials.

IT IS ALSO ALLEGED that you have committed acts of professional misconduct as defined in subsection 51 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 and as defined in section 1, paragraphs 1, 2, 4, 5, 26, 27, 28 and 29 of Regulation

828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c.34 (the "Act"), in that you:

- (a) obstructed a Complaints Committee investigation by not allowing an investigator appointed by the Registrar under s. 75 of the Code to obtain patient records;

- (b) engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

THE PARTICULARS of these allegations are that you committed the above-stated acts of professional misconduct:

1. As described in the complaint of Dr. J.H. Ennis dated October 3, 2006, and supporting materials.

At the outset of the hearing, the College advised that it was withdrawing the allegations which related to the complaint of Dr. J.H. Ennis, dated October 3, 2006, and supporting materials.

Plea By Member

Mr. Bergez denied the allegations against him as set out in the Notice of Hearing.

Overview

The hearing arose as a result of Mr. Bergez's alleged involvement in the:

- (a) permission, counselling or assisting of persons who are not registered under the Act to perform an act that should be performed by a member, namely, prescribing and/or dispensing for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers;

- (b) obstruction of a Complaints Committee investigation by not allowing an investigator appointed by the Registrar under s.75 of the Code to obtain patient records and or information from a witness;

- (c) engagement of conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

Mr. Bergez, , is a registered member with the College of Opticians of Ontario and for the period of 2005 and 2006 was the only Optician on Record for "*any and all current and future Great Glasses locations*"⁽¹⁾ until November 11, 2006.

As well, during this period, 2005 and 2006, and continuing into 2007, Mr. Bergez was the primary representative of all Great Glasses locations in all dealings with the College of Optician's of Ontario⁽²⁾, Green Shield Interactions⁽³⁾, and College Appointed Investigators⁽⁴⁾.

This matter initially came to the College of Opticians of Ontario's attention via a complaint filed with the College of Opticians of Ontario, by a representative of Green Shield on July 26, 2006⁽⁵⁾.

The Evidence

With the agreement of the College and Mr. Bergez, six volumes of Agreed Upon Documents were entered into evidence for the truth of their contents as Exhibit #2.

The College then called the following witnesses:

Anne Moore

Examination in Chief

The witness attended the Great Glasses location in Milton on Steeles Ave on June 2006. She had never had her eyes tested before, had no prescription and no eye glasses. At the Great Glasses location a sales lady by the name of 'Betty-anne' performed her eye examination and then assisted her in picking out frames. The glasses were generated based on the results of the eye test she had at Great Glasses. Upon pick-up of the glasses, the witness was not able to see her computer or read with the glasses and demanded a refund. Michael Kelly, the owner of the Great Glasses location refused and the witness left without money or the glasses. The witness never met or saw Mr. Bergez though his signature is on the receipt.

1

Cross Examination

Mr. Bergez questioned the witness' integrity and the witness responded to his comments that she said she couldn't afford the glasses when in fact she could by explaining that her heritage suggests that she is 'cheap'. Mr. Bergez further discussed the witness' complaint to the Better Business Bureau, Small Claims Court, her correspondence with Michael Kelly and her conversations with CHUM in her quest to get her money back from Great Glasses. The witness explained that in the end she got off the rack glasses from Shoppers Drug Mart. Mr. Bergez continued and discussed the complaint made by the witness to the Better Business Bureau in an email that was forwarded on to the College of Optometrists who then forwarded it on to the College of Opticians. Mr. Bergez pointed out that the focus of the complaint was the witness' desire for a refund and that Mr. Bergez was never mentioned in the complaint at all. Mr. Bergez then returned to the witness' visits to the Great Glasses location and questioned her about who was present in the store at the time of her visit. He asked if she asked if a physician, optometrist or optician was on staff. The witness replied that, no, she had not. Mr. Bergez then asked if she could say for certain that a professional was not on staff and the witness replied that she could not. Mr. Bergez then returned to the alleged fraud issue with the insurance carrier to which the witness replied that she did not know any better. Mr. Bergez then addressed the refusal to take the glasses from the shop and asked the witness if she had yet been to an Optometrist. She replied she had this last summer. Mr. Bergez suggested that she could not have been too concerned with the health of her eyes if she waited two years for this check up. Mr. Bergez's final question was if the witness had the glasses that were made for her at the Great Glasses location and the witness replied she did not.

Re-examination

The College's counsel asked the witness if at any point 'Betty-anne' suggested the witness should see an Optometrist. The witness replied that she had not.

Panel

Ms. Baltazar asked a general question about the claim process. Ms. Fron asked about the fitting process and the witness confirmed that no fitting took place.

¹ (1) - Agreed Joint Brief of Documents, Volume 3, Tabs 12 & 13
(2) - Agreed Joint Brief of Documents, Volume 3, Tabs 12 & 13
(3) - Transcript of Witness Testimony, Finlay, Oct 28, 2008 pg 141
(4) - Agreed Joint Brief of Documents, Volume 6, Tabs 36 & 37
(5) - Agreed Joint Brief of Documents, Volume 2, Tab 10

Patricia O'Conner

Examination in Chief

The witness, a registered nurse, attended the Great Glasses located at Fortinos Plaza in Dundurn, Ontario, in June three years ago. She had no prescription and had not previously required prescription eyeglasses. She was attracted to the location by the advertising of a free eye exam and 3 pairs of glasses for one. She was provided a free eye exam by a gentleman who did not identify himself as an optician, an optometrist or a physician. The witness indicated that a machine was used to test her eyes. The witness believed she was having a complete eye examination as she had never had an eye examination prior to this. Upon completion of the eye examination, the information provided by the machine was used in the creation of 3 pair of glasses. To the witness' knowledge she never met with an optician, an optometrist or a physician and no one introduced themselves as such. The witness was unable to identify Mr. Bergez and Mr. Bergez was not the individual who performed her eye examination.

Cross Examination

Mr. Bergez questioned the witness intently about her profession and her contact with opticians, optometrists and ophthalmologists. The witness indicates that she has almost no contact with any of those professions. Mr. Bergez questioned the witness about the Hamilton Spectator, which she confirmed that she rarely reads. Mr. Bergez attempts to suggest that the witness' profession should give her a greater understanding of things of a health care nature. The witness refuted this by establishing that training was limited to her specific vocation. Mr. Bergez inquired about the individual who performed her eye exam. The witness responded that she does not recall a name but was certain she has never met Mr. Bergez prior to this hearing. Mr. Bergez continued in a discussion about the phrasing of the offer of a free eye 'examination' or 'test'. The witness corrected this by stating it is a free eye 'exam'.

Re-examination

Ms. Willem's inquired if the person who dealt with the witness and took the order for the glasses was the same person who performed the eye test. The witness stated that yes it was; however, she was unaware of who completed the paperwork.

Panel

Mr. Khan inquired as to whether separate individuals performed the eye exam and the spectacle selection. The witness' response was that she was assisted by two young ladies and a gentleman who performed the test.

Janice Finlay

Examination in Chief

Ms. Janice Finlay is the Supervisor of Benefit Utilization Analysis for Green Shield. The responsibility of her department is to Prevent, detect and to address any benefit plan misuse, abuse and fraudulent use. The matter involving Mr. Bergez came to the attention initially from questions about delegation, specifically in the context of Great Glasses

Volume 2 Tab 9, sub-tab "C" of the Agreed Joint Brief of Documents was referenced. The third page of Tab "C" contained a Vision Claim Form and she indicated that it was customary for most or all of the form to be completed by the Service Provider/representative of the dispensary. She confirmed that it could be an Optician or just someone in the dispensary authorized to do so.

Tab "A" was referenced. It contained a letter sent from Green Shield to its plan members. The letter stemmed from an investigation launched by Green Shield and required it's members to answer some questions to assist in the investigation. Ms. Finlay indicated that it was protocol to request information through the use of letters as opposed to calling the member.

Ms. Finlay confirmed that she had met Mr. Bergez at the Green Shield head office in Windsor for several hours. Mr. Kevin Brittain accompanied Mr. Bergez at that meeting. Mr. Bergez requested the meeting to discuss why Green Shield had stopped paying claims for eyewear purchased through Great Glasses locations. Green Shield's response was, that it was due to the fact that Mr. Bergez's certificate of registration had been suspended.

Mr. Bergez and Mr. Brittain explained the theory of the Eyelogic System, and made it clear that an Optician was not required to be on premises. Mr. Bergez confirmed that there were no Optometrists or Physicians working directly on premises of Great Glasses. When pressed to disclose a name of a dispenser to resume payment of claims, Mr. Bergez offered the name of Mr. Arthur Kochberg.

Information regarding Green Shield's case was identified as being organized in 2 tabs, Tab "9" and "10". Tab "9" contains the information that supports the 2006 complaint when Mr. Bergez had his certificate of registration in good standing. The allegations pertained to delegation and prescriptions. Tab "10" is the 2007

complaint to the College alleging that despite having a suspended certificate of registration, Mr. Bergez still appeared as the dispensing optician of record. The supporting documents all had Mr. Bergez's name on them.

As part of Green Shield's information gathering process, before filing the complaint in 2006, they sent letters to all the Great Glasses locations asking who the dispensing optician was. Not all letters were returned, however, of those that were returned, all identified Mr. Bergez. In the meeting, Mr. Bergez was notified that the various locations had submitted claim forms bearing his signature and that there were differences in the handwriting. Ms. Finlay confirmed that the forms were all signed "BB" or "B. Bergez" and that these signatures were all clearly different. There was no question that someone else had signed the forms. Mr. Bergez confirmed that he had given the stores authority to sign his name to the forms.

Tab "F" was referred to. It contained a prescription form with a version of 'the Bruce Bergez signature' on it. Claim forms for Ms. O'Connor and Mr. W. Mulder were referenced and again Ms. Finlay pointed out inconsistencies with the signature of the provider of service on each of these claim forms.

Cross Examination

Mr. Bergez confirmed that Green Shield lodged 2 complaints against him. The first complaint was on July 21, 2006 and the second complaint was on February 12, 2007. Mr. Bergez established that there were no personal transactions between Ms. Finlay and himself and that this was not a complaint lodged personally by Ms. Finlay against himself.

Ms. Finlay clarified that the complaint was lodged by Green Shield Canada against Mr. Bergez and that Mr. Bergez was the only one named in the complaint based on their records indicating that he was the only optician associated with Great Glasses. As well, only Mr. Bergez' name appeared on all claim forms and Green Shield, through it's personal interview with Mr. Bergez confirmed that he himself had authorized the use of his signature on those forms.

The first part of the first complaint was whether those dispensing were authorized to do so under Mr. Bergez's name. The second part of the first complaint dealt with the fact that the evidence gathered by Green Shield suggested that some of their members may not have had an eye exam or that the eye exam was performed at Great Glasses and eyewear was dispensed on the basis of these results.

The allegation by Green Shield is that Mr. Bergez was not authorized to perform eye examinations and was not authorized to dispense under the terms of those prescriptions. With regards to the second complaint, Green Shield alleged that

Mr. Bergez's name continued to appear on claim forms despite the fact that his certificate of registration had been suspended.

Mr. Bergez questioned Ms. Finlay in regards to whether a complaint had been filed against Mr. Arthur Kochberg. College Counsel objected to this line of questioning but eventually the question was answered and it was confirmed that a complaint had been laid against Mr. Kochberg. Details of the complaint were not discussed.

Mr. Bergez then questioned Ms. Finlay regarding why Green Shield felt that lodging a complaint would serve the public interest. Ms. Finlay responded that they perceived a breach or violation of the standards of practice of the profession, which may have put at risk the health and safety of the plan members.

Mr. Bergez confirmed with Ms. Finlay that a number of documents were reviewed including letters sent to clients of Great Glasses. Ms. Finlay went on to say that there were problems with the documents and that Green Shield felt it was important to bring this to the attention of the College of Opticians. Mr. Bergez asked whether the College of Opticians approached Green Shield or the other way around. She confirmed that Green Shield went to the College through the complaints department.

Mr. Bergez raised the question of how Green Shield felt it was misled. Ms. Finlay felt that 'mislead' might not be the correct way to phrase the question. Discussion arose around the use of the words "audit, authenticate, investigate" and the inference that there was Green Shield was misled by Mr. Bergez.

Ms. Finlay clarified that Green Shield was not alleging that the information submitted by Great Glasses was a lie or that there was no transaction. It was the circumstances of the transaction that were being brought to the attention of the College. She pointed out the risk posed to the plan members if they perceived that they were receiving an eye exam when they may not actually have received one.

Mr. Bergez confirmed that the second Green Shield complaint acknowledged that Mr. Bergez's certificate of registration was subject to an interim suspension effective November 16, 2006. Mr. Bergez then questioned Ms. Finlay whether the fact that his certificate was suspended affected his status as founder and general manager of Great Glasses. She acknowledged that this fact would not change his status at the business but there may be restrictions associated with the suspension. A line of questioning then arose regarding whether Mr. Bergez, even though suspended, could fill in the insurance claim forms to which Ms. Finlay responded that as long as he was authorized by the business, there would be no reason why he could not.

Mr. Bergez questioned Ms. Finlay about the length of time that she held the position of Supervisor of Benefit Utilization Analysis to which she responded 6 to 7 years out of the 14 years with Green Shield. He then went on to question Ms. Finlay about her job description. The question arose whether part of her duties were to escape paying plan members their insured benefits. Ms. Finlay responded that Green Shield actually loses money every time they deny a claim and investigate.

Mr. Bergez proposed that based on this information, it would not matter to Green Shield where the eyewear was purchased as long as the claim form was filled in correctly to which Ms. Finlay responded that that was not the case and in fact the concern of Green Shield was whether the member received the correct product from the correct provider in respect to their therapeutic needs. She went on to say that the complaints were not about the forms but rather the forms were submitted as evidence to support their complaint and that the circumstances surrounding the claims weren't appropriate.

Mr. Bergez went on to examine a Standard Green Shield Claim form that was found under Tab "9", Sub Tab "A", page 3 of the Agreed Joint Brief of Documents. Mr. Bergez asked Ms. Finlay if there existed an official policy document from Green Shield on how to fill in the claim form to which she answered no as the forms were, in her opinion very self explanatory.

Mr. Bergez then asked if there was any clear instruction from Green Shield on what a proper prescription should look like. Ms. Finlay responded that this was not Green Shield's responsibility but rather that of the Regulator Body.

Mr. Bergez then questioned why Green Shield complained to the College of Opticians citing that there were significant irregularities as to the existence of prescription information from authorized prescribing professionals. He asked Ms. Finlay who determined if there were irregularities to which she replied her Audit team of analysts and manager. He asked if "significantly irregular" meant fraudulent to which she replied no and that Green Shield was not alleging a criminal act.

Mr. Bergez referred back to the claim form in the section titled "Signature of Supplier". He confirmed that this section did not have to be signed by an Optician, Optometrist, physician or owner of the dispensary. Ms. Finlay confirmed that all that is required is the signature of an authorized representative of the supplier.

Mr. Bergez went on to question whether Green Shield felt the signature in the box was done so fraudulently or without authorization to which Ms. Finlay responded no and that the complaint lodged against Mr. Bergez had nothing to do with the signature itself. In fact the complaint was lodged after Green Shield

had sent out letters to various Great Glasses locations asking who the dispensing Optician was not who was authorized to sign the claim forms.

Mr. Bergez referenced the Claim form again examining the top box labelled "Provider Identification". He confirmed that the store identification number was placed in that box and implied that Green Shield does not ask for the Optician name. Ms. Finlay said that Green Shield absolutely asks the name of the primary Optician associated with each store when they set up the account.

Mr. Bergez confirmed that in the case of Mr. Battersby's claim form under Tab "9", the name Great Glasses was written in the "Provider" field and asked if this seemed irregular. Ms. Finlay said that this was not irregular. Ms. Finlay said that they examined the claim forms that they had from Great Glasses. After the claims were paid they then approached the various locations and asked for prescription information to support the claims. Referring back to Mr. Battersby's claim, the claim form indicated that he had a new prescription. When asked for the prescription details, they were supplied with a document signed by Bruce Bergez representing the prescription.

Mr. Bergez then asked if Ms. Finlay had any close relationship to an Optometrist or Optician. Ms. Finlay indicated that there is an Optometrist on a consulting contract with Green Shield and confirmed that she had no conflict of interest with any opticians or optometrists.

Mr. Bergez asked if the filing of the complaint was specifically to do with who was prescribing the eyeglasses. Ms. Finlay confirmed this and added that they were also concerned with who was dispensing the eyewear. Mr. Bergez asked why Green Shield severed the 'pay-direct' relationship with Great Glasses in May of 2005. Ms. Finlay responded that during the course of their investigation Green Shield felt the circumstances surrounding the prescribing and dispensing of eyewear at Great Glasses was improper.

Mr. Bergez asked what led to Green Shield being uncertain about the circumstances surrounding Great Glasses. Ms. Finlay indicated the difference between Great Glasses and other providers was specifically the lack of a certificate of registration in good standing at each of the locations.

Mr. Bergez asked Ms. Finlay if Green Shield checked with an independent lawyer for an explanation of the delegation provisions of the Regulated Health Professions Act. She replied no as there was a Regulator available to answer those questions. She confirmed that Green Shield spoke with the College of Opticians for clarification regarding delegation. She said they confirmed that a valid certificate of registration must be at each location actively dispensing.

Mr. Bergez asked if Green Shield contacted the College of Physicians to which she answered no. He then asked if Green Shield contacted the College of Optometrists. Ms Finlay confirmed that they did in fact speak to Murray Turnour at the College of Optometrists.

Mr. Bergez postulated that if delegation were to be fully permissible under Ontario Law that no irregularities would have been found by Green Shield. Ms. Finlay in reply said that had the regulators said that it was alright not to have dispensers at each location where dispensing was taking place then the first part of the complaint might not have come forward. However, she did confirm that the Regulators said that someone must be at each location while dispensing was taking place. Mr. Bergez asked why Green Shield did not check this information with an independent lawyer to which Ms. Finlay responded that they felt the Regulator was the correct resource and they felt they did what was reasonable.

Mr. Bergez asked Ms. Finlay if the complaint was motivated by an attempt to get him in trouble with the College to which she replied that she had nothing personal against him and that Green Shield was not trying to get him in trouble.

At this point Mr. Bergez thanked the witness for her cooperation.

Re-Examination

Mr. Cosman had Ms. Finlay turn to Tab "9A", last page. He asked if this item was submitted after the complaint was filed to which she confirmed that it was. Mr. Cosman then asked Ms. Finlay to confirm that what they were looking at was an order form from Great Glasses location on Dundurn Street in Hamilton along with another document at the top of the page. Ms. Finlay confirmed that this was in fact an order form and that the item at the top was prescription information. She said that these items were submitted by the store upon request from Green Shield. In particular these were the documents requested to support the dispensing of eyewear to Sean Battersby. Mr. Cosman confirmed with Ms. Finlay that this document represented the prescription for Mr. Battersby dated August 2, 2005 and signed by Mr. Bergez.

Mr. Cosman referred to Tab "L" where a form was addressed to Great Glasses at 300 King George Road in Brantford. He confirmed with Ms. Finlay that when Green Shield asked who dispensed the eyewear, they responded in writing that Mr. Bruce Bergez, license C-1192 had dispensed the eyewear.

Mr. Cosman then referred to Tab "M" and confirmed with Ms. Finlay that the letter from Green Shield was sent to location 39197-Great Glasses at 17 Worthington Avenue in Brampton. Ms. Finlay confirmed that when Green Shield asked who dispensed the eyewear, the written response was that Mr. Bruce Bergez; C-1192 had dispensed said the eyewear, dated May 29, 2006

This completed Mr. Cosman's questions from the re-examination.

The panel raised no questions.

Sean Battersby

Examination in Chief

The witness, an auto worker, attended the Great Glasses location in the Dundurn Plaza in Dundurn, Hamilton in July of 2004. The witness had no prescription and no prescription eye wear with him when he went to the store. The witness had his eyes tested by a staff member who did not identify himself as an optician, an optometrist or a physician. The witness filled in his name on his Green Shield forms and the rest was completed by the staff at the witness' request. The witness was never told to get an eye test by an optometrist or a physician.

The witness returned at a later date to pick-up the glasses. The eye wear was adjusted by the staff and again no one identified themselves as an optician, optometrist or physician. The witness never met Mr. Bergez, though he may have seen him in the Hamilton Spectator. Mr. Bergez was not present in the store on either of the witness' visits and Mr. Bergez did not perform the eye exam or the dispensing of the eye wear.

Cross Examination

Mr. Bergez inquires about the store layout and suggested that he may have been on the premises but unseen by the witness. The witness acknowledged that it was possible he did not see Mr. Bergez. Mr. Bergez had no further questions for the witness.

Ilonea Van Steenwyk

Examination in Chief

The witness is a disability specialist at Brock University and attended the Great Glasses location at the Fairview Mall, at Geneva and QEW in St. Catherine's in 2005. She had heard about the 3 for 1 deal and did not have a prescription for eyeglasses. The witness was offered an eye test by a staff member, Paula, who did not identify herself as an optician, optometrist or physician. The witness' eye test was performed with the use of a machine. She then chose the frames and ordered the glasses.

The witness returned Oct. 20, 2005 to pick up the glasses. The glasses were dispensed based on the information provided by the machine. The witness was never told to have her eyes examined by an optometrist or a physician. The

witness had never seen or met Mr. Bergez before and he was not the person who performed the eye exam or dispensed the glasses. All the witness' documents were completed by the staff member, Paula.

Cross examination

Mr. Bergez inquired as to whether the witness would return to Great Glasses. She confirmed that she might. The witness was then asked about the layout of the store which she provided and Mr. Bergez inquired about the possibility that he might have been on the premises. The witness acknowledged that it was possible.

Re-examination

Ms. Willem's asks the witness if she was ever asked if she would like to see the optician. The witness replies that she was not.

Nadia Nicholson

Examination in Chief

The witness, an Animal Care Technician, attended the Great Glasses location at Fairview Mall on Geneva St in St. Catherine's in March of 2006. At the time she had no prescription, no prescription glasses and was complaining of headaches. The witness inquired as to whether the person performing the test was an eye doctor. The witness was told no and asked if she cared. The witness stated that as long as her headaches went away she did not. The eye examination was performed and glasses were chosen. The individual performing the eye test did not identify himself as an optician, an optometrist or a physician.

Four weeks later the glasses were dispensed to the witness by the same person who performed her eye examination. Again, the individual was not identified as an optician, optometrist or physician. The witness has never seen Mr. Bergez before and he was not the person who performed her eye examination or dispensed her glasses.

Cross Examination

Mr. Bergez questioned the witness about the location and layout of the store, which the witness answered. Mr. Bergez inquired if it was possible that he could have been on the premises. The witness confirmed that he could have been.

Re-examination

Mr. Cosman confirmed with the witness that she did not see Mr. Bergez in the store during any of her visits.

Panel

Ms. Fron inquired if the individual who adjusted the glasses placed them on her face. The witness confirmed that he did. Mr. Khan inquired as to whether the headaches went away, the witness confirmed that they did and added that the individual suggested a clear coat to reduce reflections.

Questions Arising from the Panel's Questions

Mr. Cosman inquired about whether the headaches disappeared with the application of the clear coat. The witness replied that the combination seemed to reduce the headaches but not eliminate them completely.

Maria Muir

Examination in Chief

The witness is a Law Clerk with the City of Hamilton who attended the Great Glasses location at Spartan and Highway 8 in Stoney Creek in November / December 2005. The witness had no prescription and no glasses. She gave a brief description of the store and explained that she was given a free eye examination in the back room. The witness could not recall if the person who assisted her was an optician, optometrist, or physician but she did recall that the individual who performed her eye examination was the same individual who assisted her in selecting glasses.

The witness returned a week later and was assisted by a female in her thirties who dispensed the glasses. Her insurance documentation was completed by the staff at Great Glasses and her prescription was based on the examination that took place in the store. The witness confirms that she may have seen another female on premises, she was never told to have her eyes examined by an optometrist or physician.

The witness had never seen Mr. Bergez, further the witness confirmed that Mr. Bergez was not the individual who performed the eye exam or dispensed the glasses.

Cross Examination

Mr. Bergez asked the witness her age and asked her to describe to location and layout of the store. Mr. Bergez asked if the witness noticed a washroom in the store. The witness replied that she did not. Mr. Bergez asked if there was any place an individual could be without being seen. The witness could not confirm or deny this.

William Mulder

Examination in Chief

The witness a retired police officer attended the Great Glasses location at Jane and Upper James in Hamilton in August of 2005 with broken glasses. The witness had a free eye test done by an individual he thought was a doctor. Tthe witness was aware of a sign outside the store offering free eye tests and he assumed the person performing the test was a doctor. The witness stated that no one in the store identified themselves as a physician, optometrist or optician.

The witness was given same day service and received his glasses several hours later. The witness stated that he believed the new glasses were generated based on the eye exam performed in the store that day. The witness was never told to see an optometrist or a physician for an eye exam. The witness had never met Mr. Bergez. The witness confirmed that Mr. Bergez was not the person who provided the eye test or dispensed the glasses.

Examination in Chief

Mr. Bergez asked the witness about his vehicle and where he was driving from. Mr. Bergez also inquired about the time he was in Hamilton attempting to establish that the witness was not certain of his details. The witness did confirm that he saw the sign and it stated 'free exams'.

Panel

Ms. Fron inquired as to whether anyone offered to place the lenses from the broken glasses into a new frame. The witness said that they did not.

Janette Power

Examination in Chief

The witness identified herself as a legal assistant working in Cayuga who attended the Great Glasses location in Upper Centennial in Stoney Creek on Nov 27th 2006. The witness briefly described the location and explained that she went

to the store because they offered free eye exams and a three for one special. She did not have a prescription when she entered and she did not have glasses with her. She did own prescription glasses which she wore for reading. At the store, she spoke with 'Brenda Thomson' who said they would perform an eye exam first and then pick out the frame, which they then proceeded to do. The witness went on to explain that a machine was used to perform the eye exam and that the only other person who helped was another woman who assisted in picking out frames. Two men were present but she did not deal with either of them.

The witness paid for the glasses and was given a receipt and an invoice for the glasses that she was given at the store. The glasses were generated based on the eye examination performed in the store. The witness was asked if Ms. Thomson identified herself as an optometrist, optician or physician. The witness replied no. The witness was asked if anyone in the store identified themselves as one of the three. Again the answer was no. It was pointed out that on the insurance forms the name of the prescribing optometrist or ophthalmologist is Eyelogic. The box on the insurance form that stated "I am a legally qualified" Optician was checked and it was signed by Bruce Bergez on November 27, 2006.

Upon watching the news, the witness saw a story about the Great Glasses company and called the store to request her money back and ask if Ms. Thomson was an optometrist. Ms. Thomson did not answer and put another gentleman on the phone. The witness believes his name was Mike Friday and she believes he said he was the owner. The witness pointed out that it wasn't Mr. Friday's signature on the insurance forms. Mr. Friday explained that they had Mr. Bergez's permission to sign his name to the form when he wasn't there.

The store would not give her money back, but they would pay for her to have her eyes tested elsewhere. She did this, the new prescription was close enough and the doctor explained that she would be safe to use the glasses with the previous prescription. The witness had never seen Mr. Bergez before. The witness could not remember who finally gave her glasses to her.

Cross Examination

The witness explained that she filed the complaint before ever receiving the glasses and that occurred at the suggestion of the Optometrist she went to see after her concerns with Great Glasses. Mr. Bergez intensively questioned the witness in regards to the exact dates of the complaint and who encouraged her to file it, the eye examination and the causation of her complaint.

Sharon Ang

Examination in Chief

The witness identified herself as a writer who attended the Great Glasses store on Major MacKenzie Drive in Richmond Hill on June 3rd, 2006. She briefly described the location including the basic layout and the sign advertising free eye exams outside the front entrance. She went to Great Glasses because her husband saw the free eye exam sign and it was in her neighbourhood. Upon entering the store a Mr. Mak offered her an eye examination which he then performed. Mr. Mak wrote out an eyeglass prescription and they then picked out a frame. The witness recalls only the use of the Eyelogic system to examine her eyes and also recalls three other employees present in the store, all of them female.

Mr. Mak did identify himself as an optician, though Ms. Ang saw no certificate in the store identifying him as such. She paid for the glasses and received an invoice which she identified in the 'Agreed Statement of Fact'.

When she picked up the glasses, two and a half weeks later, two female employees adjusted the glasses. Neither of these employees identified themselves as opticians, optometrists or physicians. After having the glasses adjusted, Ms Ang left with the glasses. The witness confirmed that the glasses she received from Great Glasses were based on the eye test performed by Mr. Mak. The witness clarified that she did not meet Mr. Bergez on this occasion and that Mr. Bergez did not perform the eye exam or give her the glasses.

Cross Examination

The witness clarified for Mr. Bergez that she had only met him when she sued him in Small Claims Court and not at the store. The witness sued Mr. Bergez in Small Claims Court because she found out from the College of Opticians that Mr. Mak was not, in fact, an optician. Mr. Bergez asked the witness if, when she made her enquiries of the College, the College gave her the names of any of the opticians that may or may not have been involved with Great Glasses. The Witness replied they did not. When asked if she asked for such information, the Witness replied that she did not. Mr. Bergez asked if she identified him in her complaint. Again the Witness said no.

Mr. Bergez inquired if the Witness might have misunderstood Mr. Mak when he said he was an optician. The Witness replied that, no, she did not misunderstand him. Mr. Bergez goes on to inquire as to whether Ms. Ang spoke with the College of Optometrists or Opticians. Ms. Ang explained that she originally spoke with the Optometrists Association of Canada, as Mr. Mak stated it was okay for Opticians to provide eye exams and she wanted to clarify whether this was correct or not.

Mr. Bergez inquired about when and how she filed her complaint with the College of Opticians and whether or not the College of Opticians provided the witness with the information that Mr. Bergez was involved with Great Glasses. The witness confirmed the process and that the College of Opticians never offered her any information about Mr. Bergez's involvement with Great Glasses.

Panel Question

Mr. Khan asked the witness about the identification that Mr. Mak was wearing and whether or not it had any identifying symbols. The witness confirmed that it had his name and nothing else.

Jie Chao

Examination in Chief

Mr. Chao identified himself as AVP of technology services at an insurance company and that he attended a Great Glasses location in November 2005 on Worthington Avenue in Brampton. The witness described the location and the layout of the store in brief and that he went to the location because it was close to his parents place. The witness explained that he had a prescription for eyeglasses when he went to the store but he did not have it with him that day, but he did have prescription eyeglasses with him. The witness confirmed that the staff in the store did nothing with his existing eyeglasses. The witness had his eyes examined and was fitted with three pair of glasses. The witness' eye exam was performed by Milly Tseng on a machine. There were others in the store who appeared to be staff, but the witness could not recall the numbers with accuracy.

Upon pick-up of the glasses two to three weeks later the witness recalls being assisted by a gentleman who fit and adjusted the glasses for him. Neither of the people the witness dealt with identified themselves as opticians, optometrists or physicians.

Later, in August of 2006, the witness returned to the location to attain a copy of the prescription so he could purchase contact lenses elsewhere and was told he could not be given a copy of the prescription as their policy was to just sell glasses and the eye exam was free and would not be given out. The witness did not think he had ever seen or met with Mr. Bergez before and Mr. Bergez was not the person who performed the eye exam or gave out the glasses.

Cross Examination

Mr. Bergez clarified with the witness that when Mr. Chao came to the Great Glasses location he did own glasses. He also clarified that when Mr. Chao enquired with the College of Opticians they explained that Milly Tseng was not in

their data base. Mr. Bergez asked if the College of Opticians gave Mr. Chao then name of any Optician working with Great Glasses and the witness responded, no. Mr. Bergez also clarified that the location would not give Mr. Chao his prescription.

Michael Hayes

Examination in Chief

Mr. Hayes currently owns his private investigation agency, receiving his license in July 2008, but prior to this, he worked with the OPP, for 32 years until his retirement. Prior to owning his investigation agency, in the year 2000, Mr. Hayes worked as a private investigator for Northwest Protection Agency, and was involved with the College of Opticians for the last five or six years, doing investigations, mostly in the realm of purchasing glasses throughout the province in an undercover capacity.

Mr. Hayes' standard operating procedure for doing investigation for the college is to be contacted by the registrar or designate by phone about the investigation required, followed by a Letter of Appointment, particulars of the person being investigated and direction to remain in contact with the registrar throughout the investigation and to receive direction from the college.

Mr. Hayes was contacted by phone Wednesday, March 21, 2007, by Mina Vidakovic, Director of Professional Programs and had a brief discussion regarding the investigation. On March 23, 2007, by express post, Mr. Hayes received a Notice of Appointment, with direction to coordinate the investigation with another investigator, Wayne Moore, his branch manager in Hamilton.

The purpose of the Notice of Appointment is for Mr. Hayes to investigate Bruce Bergez, suspended Optician C-1192, as to whether Mr. Bergez has committed an act or professional misconduct, pursuant to Section 75 of the Health Procedural Code, under the Regulated Health Professions Act 1991, and Opticianry Act 1991, referring specifically to Section 76 and 78, schedule 2 of RHPA 1991. The Notice of Appointment must be with Mr. Hayes at all times during the investigation and must show this document on entry. Mr. Hayes must also agree and adhere to the agreement and instructions attached as Schedule 1, 2, 3 and 4.

The Notice of Appointment advises Mr. Hayes to attend 4 Great Glasses locations, for the purpose of obtaining original patient records, file cards, copies of all prescriptions and dates, dates patient came to the dispensary, particular details of the visit, work orders, copies of invoices (frames and lens invoice) and lab invoice. Listed below are the locations of the stores:

Schedule 1 – Mr. Hayes was to attend Great Glasses, Fortinos Plaza 26-17 Worthington Ave. Brampton, Ont., Tuesday, March 27, 2007, to obtain original patient records of Jie Chao. Before entering the store, Mr. Hayes took photographs of the store, at approximately 11 am, to provide to the registrar as evidence. Mr. Hayes entered the store at 11:03 a.m. and was met by a young lady. Mr. Hayes introduced himself, by showing his business card and asked to speak to the manager. The female associate went to the rear of the store. When she returned she told Mr. Hayes that the manager was in, but was too busy to see him. Mr. Hayes asked who he was talking to and was told her name, Charlene Bernasko and this was confirmed by the card provided. Ms. Bernasko was given a copy of Letter of Appointment from the College and a copy of schedule 1. Mr. Hayes briefly explained their obligation and his duties under the legislation. Ms. Bernasko took the papers to the back of the store, returned and said Anna was not releasing any papers at this time. Mr. Hayes was given a card bearing the name Anna Mifsud. No documents were provided to him, except the 2 business cards. Mr. Hayes thanked Charlene and left the store. A report was prepared for the visit.

Schedule 2 – Mr. Hayes was to attend Great Glasses Store, Ikea Plaza, 1025 Plains Road East, Burlington, to obtain original patient records of Julie Bettiol. Mr. Hayes took photographs of the store and when he entered the store was met by a young lady. Mr. Hayes introduced himself by giving his private investigator card. Mr. Hayes asked to speak to the manager, but the manager was with another customer. The female associate took his card to the back of the store and a young man approached him and identified himself as Don Backwell, by his business card. Mr. Backwell was not the manager, but was in charge of the store. Mr. Backwell asked for Mr. Hayes' business card and then produced a copy of his appointment, and a copy of schedule 2, requesting the original patient's records. Mr. Hayes was asked to step outside with Mr. Backwell and was told that as per information received, Mr Hayes' business card was fake and he needed more than a business card for identification. Mr. Hayes showed him his identification license #621853, private investigator and advised Mr. Backwell that he had been a police officer for 32 years. Mr. Backwell confirmed that he had received a phone call advising him of Mr. Hayes' coming. Mr. Hayes was instructed to call Chris H, as per instructions given to Mr. Backwell. Mr. Hayes was given a piece of paper, with the name and phone number for Gowring Law Firm. Mr. Hayes called Chris Hampton and explained what his function was and also explained the documents given to Mr. Blackwell, requiring the original patient's record. Mr. Hampton advised him, that he needed time to discuss the request with the lawyers and was only looking at his job, and if Mr. Hayes could call back later. Mr. Hayes advised him to call the College as it was only acceptable to acquire the records at that time. Mr. Hayes again repeated what he was entitled to under the legislation. Mr. Hayes returned to the store and handed the documents to the young lady he met originally and asked her to hand them to Mr. Backwell, who left it outside and is out of sight, and to advise him that Mr.

Hampton refused to release any documents or health records. Mr. Hayes thanked the young lady and left the store at 12-32.

Schedule 3 – Mr. Hayes is to attend Great Glasses, 1250 Steeles Ave. East in Milton, to request original patient's record of Mrs. Anne Moore, March 27, 2007. Mr. Hayes' took the picture of the store prior to entering. He entered the store at 11:40 and Mr. Hayes was met by a young man at the counter named Vishal. Mr. Hayes provided him with his business card as a means of introduction and asked to speak to the manager. Vishal said the manager was in, but was busy serving another customer. A copy of the Appointment Letter and a copy of Schedule 3 were given to Vishal. A gentleman came to the counter and Mr. Hayes asked if he was the manager. The man identified himself with his business card as Mike Kelly, Manager. Mr. Kelly looked at the papers given to Vishal and asked Mr. Hayes if he could come back later, as it would take some time to pull everything and they could not release them at that time. Mr. Hayes explained that they had a copy of the Letter of Appointment and they were required to cooperate and provide all original patients records, requested in schedule 3, and that it was his responsibility to receive the original patient records, as investigator of the college. Mr. Hayes left the store without the documents requested.

Schedule 4 – Mr. Hayes is to attend Great Glasses Dominion Plaza, 1070 Major Mackenzie Dr. East, Richmond Hill, Ontario, March 27, 2007 at 9:52 hours, to request the original patient records of Sharon Ang and Gail Karriere. Mr. Hayes took a photograph of the store prior to entering and at the bottom of the photograph is a business card, named Suzanne Kneebone, who he was advised was the manager of the store, whom he didn't meet. An older lady of East Indian decent was also entering the store, so he held the door for her. Mr. Hayes was met by a young man, also, of East Indian heritage, at the counter. Mr. Hayes introduced himself by giving his business card and asked to speak to the manager, who he was told was not in yet. Mr. Hayes asked to speak to the person in charge and the young man asked if he could help him. Mr. Hayes produced his Appointment Letter and also gave a copy of the schedule 4, requesting the original patient records of the above clients. The associate made a phone call and while on the phone Mr. Hayes asked his name and was advised that his name was David. David was not a licensed optician. David gave Mr. Hayes his card, which had no last name. As soon as David hung up the phone, Mr. Hayes was advised that David's manager had instructed him that no files or documents could be released without consulting a lawyer and the manager who gave the direction was Susanne Kneebone. Mr. Hayes explained to David his duty to comply with the request under the legislation. David made another call and was told by the manager that a lawyer had to be contacted first. Mr. Hayes left his business card, copy of the Appointment and schedule 4, thanked David and left the store at 10.06 am. Mr. Hayes did not receive any documents, and spoke only with David.

The witness explained that he received correspondence from Mr. Bergez. Mr. Hayes had not seen Mr. Bergez' signature, but below the signature is the name Bruce Bergez, so he assumed that what he received was from Bruce Bergez. He received it by fax on March 29, 2007, and a copy came by express post to Northwest Protection Services Limited, Orillia, Mr. Hayes' business address. The letter advises Mr. Hayes to be aware that on July 15, 2005, by way of verifiable mail and facsimile transmission, the College of Opticians and its various committees including the registrar and the complaints committee who requested his appointment, were barred entry under the Ontario Trespass Property Act, R.S.O. 1990, Chapter T-21 and a notice will be received under a separate cover. The letter also indicates to him that prior to further proceeding, to seek independent legal advice as to the appropriateness of his actions, with a view that all facts in the matter were disclosed by the College of Opticians, prior to investigation.

Another document was received on March 29, 2007 by fax on that date and by express post, short time later, signed by Bruce Bergez, and typed below, Great Glasses, 286 York Road, Dundas, Ont. This document is directed to the attention of the Michael Hayes and Wayne Moore, and others, advising them, that in accordance with Section 1 (1) (b), 3(1), and 5(1)a, of the Trespass to Property Act, RS0 1990, Chapter T-21, to inform the College of Opticians and their agents and agents of Northwest Protection Services, in accordance of Section 2(1)a, they are prohibited from properties of all Great Glasses locations within Ontario. The College of Opticians is the governing body for Opticians and Opticians only and they have no statutory right of authority on the premises and are barred from such entry.

Cross Examination

Mr. Bergez asked about the witness involvement in law enforcement which was for a substantial length of time, mostly multidisciplinary and also made a comment that the witness is a fairly seasoned and well learned individual. Mr. Bergez heard the witness state that he had spoken to various individuals at Great Glasses, where he repeated the legislation and Mr. Hayes answered that he did not repeat the legislation, but only advised them of their obligation under the legislation, to produce the original documents that he was requesting and was not conversant with the legislation and could not repeat what the legislation said.

Mr. Bergez asked the witness where he gets the understanding, using Don Backwell, as an example, at 1025 Plains Rd, that Mr. Backwell was required to give the documents and the witness replied that by presenting him with a Notice of Appointment of himself, as an investigator and the schedule pertaining to that store, the person in charge at that time was obligated to provide the health records asked for. Mr. Bergez asked if the Letter of Appointment specified Mr. Backwell's name or somebody else, and the witness replied that it specifies him

to attend the Great Glasses Store, with the Notice of Appointment and the Schedule associated with it and ask for the records, but it did not specify the person he is supposed to approach.

Mr. Bergez asked the witness to read Volume 1, Tab 4, about his being appointed as investigator of the College of Opticians of Ontario, for the purpose of conducting an investigation into whether Bruce Bergez, suspended Optician-C-1192, has committed an Act of Professional Misconduct, the appointment pursuant to Section 75 of the Health Professional Act 1991 and Opticianry Act 1991, sections 75-79, specifically section 76, schedule 2 and section 78 schedule 2 RHPA, 1991. Mr. Bergez asked the witness, if he noticed anything irregular about the sentence structure and Mr. Hayes answered that he did not. Mr. Hayes was asked if he opened sections 75 to 79 of the Regulated Health Professions Act, to see what powers he had and Mr. Bergez said that the witness had no jurisdiction to investigate and wants the statute to be part of the record.

Section 75, states that "The registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if" Mr. Bergez also asked the witness to read Section 76 (1), where it states that "An investigator may inquire into and examine the practice of a member to be investigated and has, for the purposes of the investigation, all the powers of a commission under Part 2 of the Public Inquiries Act." Mr. Bergez also referred to 76 (2) where "An investigator may, on the production of his or her appointment, enter at any reasonable time the business premises of the member, may examine anything found that is relevant to the investigation." Mr. Bergez then asked the witness if in his mind, he is authorized to investigate, if there's no member.

Mr. Cosman then argued that this was a legal question and the position that he took was that Section 76(2), which allows an investigator on the production of his appointment to attend and, enter at any reasonable time, the business premises of the member, examine anything found that is relevant to the investigation and that includes premises of Great Glasses store, because of Mr. Bergez's relationship with Great Glasses group of stores, by virtue of the fact that he is the optician on the records of the College, as being optician for these stores.

Mr. Bergez said that he was just attempting to find out from the witness if Mr. Hayes thinks that he did not have the authority, if there was no member and the witness replied, "No, he did not" and quoted the next section which says "no person shall obstruct or conceal". It just says no person. Mr. Cosman interjected that the witness had already answered that he believed he had the authority. There were no more questions from Mr. Bergez.

Re-Examination

As a point of clarification, Ms. Willems' asks about the time the witness spent in jail. Mr. Hayes explains that the time was in an undercover capacity to gain evidence from cellmates on importation of narcotics and homicide.

Further Cross Examination

Mr. Bergez asked the witness, while in jail, in an undercover capacity, if everything he said was the truth and the witness replied that he was not under oath then. Mr. Cosman also replied that the role of the inquiry is not going to get into the role of a police officer acting in undercover sting.

Panel Questions

The witness was asked if any patient records were obtained from all the stores visited and Mr. Hayes replied that he never received any records of any patients, in any of the stores.

Mr. Hayes was also asked if in the documents he was given, which included the locations to attend and the names of the patient files he was to retrieve, was he directed to speak to anybody in particular or just show up at the location. Mr. Hayes replied that he was to just show up at the location and seek the patient's records.

Sharri-Anne Gray

Examination in Chief

Ms Sharri-Anne Gray of Hamilton visited the Great Glasses location on Centennial Parkway in Stoney Creek in the fall of 2006. She indicated that she was attracted by the offer of 'Three for one glasses'. She took her prescription from an Optometrist to the front counter where a young lady who subsequently helped her select frames, performed some fitting of the nose bridge and placed the order.

When she returned to pick up glasses she was served by an older woman. One of the three pairs was incorrect and had to be remade. The older woman fitted the other two pairs. Upon the third visit to pick up the remade pair, a second older woman served Ms. Gray. None of the three women during the three visits identified themselves as Opticians, Optometrists or physicians.

Reference was made to Volume 2 of 6 of Agreed Joint Brief of Documents, Tab "10", sub-tab "x". Ms. Gray confirmed that this was her insurance form with her handwriting in the "Patient Information" area and that the rest of the writing on the form was filled out by someone at Great Glasses but she was unable to confirm whom it was.

Ms. Willems identified Mr. Bergez. Ms. Gray when asked if she had ever seen or had been served by Mr. Bergez, she answered no.

Cross Examination

Mr. Bergez declined to ask any questions of the witness.

James Mummery

Examination in Chief

The witness identified himself as a high-pressure pipe welder and a steamfitter who attended the Great Glasses store at Plains Road in Burlington on or about November 11, 2006. He had a prescription from his optometrist. He was attended to by a female attendant who took his prescription while he proceeded to pick out some frames. This attendant took measurements on the glasses. The witness left the store when the attendant finished taking the measurements. Because of the three-for-one deal, he ordered a pair of safety glasses, a pair of everyday glasses and a pair of sunglasses.

The glasses were picked up about a week and a half to two weeks from the first visit. Nicole, the female attendant, took the glasses and adjusted each pair so they would fit squarely on the witness' face. The witness complained that the safety glasses had clip-on side shields which were supposed to be permanently attached. These shields would constantly break and he has to get new side shields and eventually he started to glue them on. He also complained that the everyday glasses went foggy after six months or so.

He was attended to by another female attendant when he visited the store to get new side shields. No employee or staff in the store identified themselves as opticians, optometrist or physicians at anytime during his visits to the store. The witness clarified that he has never seen or dealt with Mr. Bergez during any of his visits at the Great Glasses store.

Cross Examination

Mr. Bergez has no questions for this witness.

Panel Question

Ms. Baltazar asked the witness if he has seen or noticed a "College of Opticians of Ontario Registration", a diploma or certificate bearing the name of the Optician or Optometrist along the wall of the store. The witness replied in the negative.

Sheila Zalusky

Examination in Chief

The witness identified herself as a bank employee who attended the Great Glasses Store at 1865 Lakeshore West an Clarkson in Mississauga sometime in December 2006. She briefly described the size and basic layout of the store. She was attended to by a gentleman and she informed him that she was looking for reading glasses. She tried on frames and when she has picked out the glasses she liked, the lady at the counter wrote down her order. This same lady did a little test where she had to look at something before she wrote the order. There were two other gentlemen in the store at that time but no one identified themselves to her as opticians, optometrists or physicians. The glasses were ready in two or three weeks after the first visit.

She got three glasses and one of them didn't fit very well so they had to adjust the arms of the third pair until it felt comfortable enough. She didn't recognize the glasses as the ones she picked but she couldn't prove it. The witness claimed that she has not met Mr. Bergez but has seen his pictures on the Internet.

Cross Examination

Mr. Bergez had just one question. She asked the witness what prompted her to go to the internet to look for pictures. The witness replied that she wasn't looking for his picture but it was Green Shield who said they were going to pay for her prescription.

Jeremy Simington

Examination in Chief

The witness identified himself as a Paramedic who attended the Great Glasses store at Upper James in Hamilton sometime in December of 2006. He visited this store because his glasses broke and he could not find his spare glasses. He needs glasses for work. His original prescription was from a test performed at this same Great Glasses store back in 2004.

The witness described the layout of the store. He was attended to by Cindy Schwier who helped him pick out the glasses he liked. She did the paperwork

and had the lenses done. The glasses were ready within one hour. Cindy did not identify herself as a physician, optician or optometrist.

The witness clarified that he has not seen nor dealt with Mr. Bergez before.

Cross Examination

There were no questions of this witness from Mr. Bergez.

Carolyn McLissac Power

Examination in Chief

Ms. Caroline MacLissac-Power was introduced and informed the Panel that she has been the Registrar of The College of Opticians since July 2003 and, she has been a licensed optician since 1996. The witness testified that Mr. Bergez is currently suspended under an interim suspension by the order of the Executive Committee. The witness also confirmed that Mr. Bergez was first licensed in 1981. Evidence was shown as to Mr. Bergez's C1192 application for renewal for the year 2005 location as "Any and all current and future Great Glasses locations." The same information was given in his renewal for 2006, and no renewal for 2007 as Mr. Bergez was under an intern suspension. The witness testified that no other opticians aside from Mr. Bergez and Mr. Kochberg were registered during this time under the Great Glasses locations.

The witness was asked about and explained the document "Appointment Of Investigator Of College Of Opticians" as an appointment of an investigator by the College of Opticians under the Health Professions procedural code and this document was signed by her and dated March 21/2007. The investigator appointed was Mr. Wayne Moore of Northwest Protection Services Limited. The witness confirmed that the investigation did not proceed and the witness advised that the investigators were barred entry into the Great Glasses locations, under the "Trespass To Property Act". The witness read evidence from Mr. Bergez's letter "The college is the governing body for opticians and opticians only and as such they have no statutory right of authority to be on these premises and are accordingly barred from such entry". The witness was asked for the date Mr. Bergez was suspended and the witness confirmed November 2006 as the date.

Cross Examination

Mr. Bergez asked the witness if she is familiar with the regulations attached to the Opticianry Act, called the Professional Misconduct Regulation which is known as Ontario Regulation 828/93 and the witness confirmed that she was aware of this. She also confirmed that she is aware of the Professional Guidelines which the college published in 1994 as both an optician as well as Registrar. The

witness was asked if as an optician, as outlined in the Standards of Practice, you must tell patients you are not a doctor and the witness testified that you must tell patients you are an optician.

The witness was then asked for a broader opinion on the Standards of Practice because she is both an optician and Registrar. Within these standards the witness was asked if there were any restrictions prohibiting an optician from using a retinoscope, and the witness responded that there is a list of equipment that is required to fit contact lenses and eyeglasses but she was not sure if there were limitations around what you may not use. The witness was asked if you could use a trial set of lenses, and the witness testified that the document was not drafted in the negative form so it would not outline that you could not use a birthing centre either. Mr. Bergez asked the witness if there are any restrictions on using the Eyelogic system and the witness once again replied there we no negatives on the document. The witness agreed that the Eyelogic system would provide you with refractive error numbers.

Mr. Bergez then asked if a policy on delegation was circulated to its members in 1998 and the witness agreed. The witness testified that under certain circumstances an optician can delegate certain components of dispensing and confirmed that you need to inform the patient that delegation is occurring.

At this time Mr. Cosman made many objections all with regards to the questions sticking to factual information, from the evidence brought forward and not examining the witness's opinions.

The witness confirmed that Mr. Gord Hyland was the Registrar in 2001, when the creation of the refractometry directive. Mr. Bergez asked the witness if she reviews past complaint committee decisions, and she advised that the complaint committee has the statutory authority, and that she has no authority to make changes to any decisions made. Mr. Bergez then asked the witness if the directive that prohibits refractometry covers non-members of the college and the witness answered it would only speak to members.

Mr. Bergez then asked the witness who Cathi Mietkiewicz is and her role at the college and the witness explained that she is the past president of the College of Opticians and held the position in 2006, and 2007. Mr. Bergez then asked the witness if she was aware of a very lengthy court case that the College of Opticians is involved in against Bruce Bergez and various entities who operated the various Great Glasses in Ontario, and the witness answered she was. The witness testified that the president does not act unilaterally in matters, and that the president works with the Registrar. The witness then testified that performing refractometry was not a controlled act in Ontario, but that prescribing is a controlled act. The witness then confirmed that a prescription had to be signed for it to be valid and that a stamp would also be fine.

Mr. Bergez then asked the witness if within the code, there is a stipulation that a suspended member then becomes a non-member and the witness answered that to her understanding that once you are a member you continue to be a member unless your license is revoked.

Mr. Bergez then directed his question to "The Appointment of Investigator" and asked the witness if the investigation did not proceed, and she agreed. Mr. Bergez and the witness had some questioning on the wording "completed or conducted" in regards to the investigation. Once again Mr. Bergez asked the witness if the investigation did or did not proceed, and if the investigators were allowed into the premises. The witness testified that they were not able to conduct the investigation.

The witness was then asked if she had knowledge of when the RHPA came into force, and responded with 1993 as to when it was proclaimed, and enacted in 1994. Mr. Bergez then asked the witness if the legislation does intend that delegation can occur, and the witness confirmed that the intention of the legislation is to enable delegation within some set of parameters. Mr. Bergez then produced evidence of a complaint from Green Shield dated July 21/2206 and went on to list 9 other complaints all listed in the Notice Of Hearing and asked the witness if the Standards of Practice dated September 21/1994 would be the governing standards for the activities that occurred in that year and she agreed. The witness testified that the optician must analyze the patient's optical requirements in conjunction with a prescription issued by the prescriber. The witness also testified that the HPRAC concluded that conducting a refractometry test is not within the scope of practice of opticians.

Mr. Bergez asked the witness if in her capacity as Registrar would she agree or disagree that the college has no jurisdiction over optical dispensaries or commercial corporations and the witness confirmed this. Mr. Bergez then asked the witness if the optician has to be the last guy to hand the glasses to the patient and the witness responded with the fact that Mr. Bergez may have been talking about the three core cognitive functions that cannot be delegated. Mr. Bergez and the witness had different terminology for delegation and the witness testified that the document on delegation was not crafted in the way Mr. Bergez was asking his questions.

Mr. Bergez then asked the witness if an optician should teach some of his skills to the other non-opticians that are working with them, and the witness answered with absolutely. The witness was then asked if there was a Standard Of Practice that prohibits opticians from teaching his skills to other non-opticians, and the witness responded with no. At this point Mr. Bergez then ended his questioning.

Re-examination

Mr. Cosman asked the witness to elaborate on the core cognitive functions that she referenced earlier. The witness explained the existing policy on delegation:

“All functions of dispensing may be delegated except the three core cognitive functions and behaviours in dispensing may not be delegated, so therefore a member may not delegate: 1. Determination and recording of specifications of the eyeglasses, contact lenses or sub-normal vision devices to be provided to a patient. 2. The confirmation and recording of appropriateness of the eyeglasses, contact lenses, or sub-normal vision devices to be delivered or provided to the patient; 3. The provision and recording of the necessary advice, counseling and associated care to the patient about the use of the eyeglasses, contact lenses, or sub-normal devices.”

Mr. Cosman then asked the witness if any of these cognitive functions can be delegated by an optician to a staff, non-registered optician, in a dispensary as part of the function of teaching them about dispensing. The witness answered that those are exempted and you cannot delegate the three core cognitive functions.

Wayne Moore

Examination in Chief

The witness identified himself as a private investigator employed by Northwest Protection Services. He was previously a police officer with the Hamilton Police Services. He has done investigations for the College of Opticians of Ontario for four to five years.

On March 21, 2007, he was appointed by the College of Opticians of Ontario to inquire into and examine the practice of Mr. Bruce Bergez, suspended optician C-1192, whether he has committed an act of professional misconduct pursuant to sections 75 to 79 of the Health Professions Procedural Code, Schedule 2 to the Regulated Health Professions Act, 1991. His appointment required him to obtain certain patient records from a number of different Great Glasses locations as outlined in Schedules A, B, C and D of the Notice of Appointment. Below are the details of Schedules A, B, C and D:

Schedule A – He is to attend the Great Glasses store at University Plaza, 119 Osler Drive, Unit 7, Dundas, Ontario to obtain the original underlying patient health record of Dr. Jeff Ennis.

Schedule B – He is to attend the Great Glasses store at Fortino's Plaza, 50 Dundurn St. S., Hamilton, Ontario to obtain the original patient health records of

the following patients: Lori Johnson, Sean Battersbym Holly Patterson, Patricia O'Connor, Bonnie-lyn Green and Donna-Lyn Burke.

Schedule C – He is to attend the Great Glasses store at Highland Plaza, Unit 5, 135 Upper Centennial Parkway, Stoney Creek, Ontario to obtain the original patient health records of Ms. Janet Power.

Schedule D – He is to attend the Great Glasses store at Spartan Plaza, 483 Hwy # 8, Stoney Creek, Ontario to obtain the original patient health records of Ms. Darlene Smith.

On March 27, 2007, the witness attended the Great Glasses store at 135 Centennial Parkway in Stoney Creek at 10:45 am and was met by Pam Finton, a female employee. She referred the witness to Mr. Glen Friday who advised him to send a written request to the store, to his attention and he would submit the request to their legal department. He left the store at 11:10 am without obtaining the documents per schedule C.

The witness next attended the Great Glasses Store at 483 Hwy #8, Stoney Creek per Schedule D at 11:20 am. He was attended to by a female employee who asked if he has an appointment. When he replied that he did not, the witness was advised to book an appointment and they will discuss it and she would send the request to their legal department. The witness left the store at 11:25 am without obtaining the documents listed in Schedule D. The female employee did not want to identify herself.

The witness then attended the Great Glasses Store in University Plaza, Dundas per schedule A at 12:10 pm. He was met by Ashtar Abdul-Kuadar. She took the appointment letter and patient list requesting originals of this patient's health record and stated that she was unable to photocopy them. She then stated that she will send the documents to their legal department and they will contact the College. The witness left the store at 12:18 pm and was not able to obtain the documents in Schedule A.

The witness then attended the Great Glasses Store at 50 Dundurn Street South, Hamilton at 10:00 am on March 27, 2007. He presented the appointment letter and patient list to a female employee who went into a back office with the documents. Mike Cairns returned them back to the witness and was asked to leave the store. He left the store at 10:10 am without obtaining the documents per Schedule B.

The witness later received a correspondence delivered to his office signed by Mr. Bruce Bergez indicating that agents from Northwest Protection Services and the College of Opticians are prohibited from the properties of all Great Glasses locations within Ontario. The letter was dated March 29, 2007.

The witness indicated that he had received a similar letter in 2005 but this time, he believed that he was properly operating on behalf of the College of Opticians based on the appointment letter he had received and the legislation which he was operating under with respect to that appointment. The witness also discussed with Ms. Vidakovic of the College of Opticians the existence of the previous trespass letter and he was given the authority to continue with the investigation by the College.

The witness also confirmed that he did not receive any of the documents he was sent to obtain from the various Great Glasses stores.

Cross Examination

Mr. Bergez asked the witness if the College of Opticians ever gave him the date of Mr. Bergez's registration suspension. The witness replied that he does not have that information unless it was identified in the appointment documents.

Mr. Bergez inquired whether the witness went to a third party to get a second opinion about the prior trespass letter or just simply accepted the advice received from Ms Vidakovic and moved forward. The witness confirmed that he accepted Ms Vidakovic's advice and moved forward.

The witness also clarified that he was working on behalf of the College of Opticians of Ontario.

Marc Raymond

Examination in Chief

The report of Mr. Marc Raymond ("Mr. Raymond") dated September 29, 2008 and his attached C.V., were entered into evidence as Exhibit #3. Mr Cosman asked to have Mr. Raymond qualified as an expert. Bergez advised that he had no objection to Mr. Raymond being qualified as an expert and accordingly, the Panel qualified Mr. Raymond as an expert witness on opticianry.

The witness then reviewed the elements of the practice of opticianry for the benefit of the non-optician panel members present. Mr. Raymond discusses interpreting prescriptions, evaluating and advising a person with respect to the prescription and the design of the glasses and the providing, verifying, adapting, fitting and duplicating of devices for sub-normal vision, contact lenses or eyeglasses. The witness continued to explain the definition of dispensing as determined at the request of the Ministry of Health by the Optician, Optometrists, Physicians and Surgeons and all other stakeholders and organizations. That definition is that dispensing is the preparation, adaptation and delivery of

eyeglasses, contact lenses or sub-normal vision devices to a person. This definition has been accepted in court several times.

The witness went on to explain delegation, making specific reference to the aspects of the dispensing process that could not be delegated. Specifically, the witness explains the three core cognitive functions that cannot be delegated which are; (1) the determination and recording of the specifications of the eyeglasses, contact lenses or sub-normal vision devices to be provided to a patient, (2) the confirmation and recording of the appropriateness of the eyeglasses and (3) the giving of instructions. The rationale to these three core functions is that they cannot easily be taught in a work setting and require extensive formal training.

The witness also explained the potential risk of harm to the public. This Risk of Harm has three aspects; (1) Direct Risk to the patient, the example given was a child with amblyopia who is not corrected correctly and eventually develops permanent blindness in the amblyopic eye. (2) Injury to the person, the example given was the individual with incorrect glasses who falls and breaks their arm because they couldn't see the stairs properly and (3) Injury to Others, the person with incorrect glasses can't see properly and runs someone over with their car.

Cross Examination

Mr. Bergez did not ask any this witness any questions.

The College then concluded its case.

Defence

Following the conclusion of the College's case, Mr. Bergez elected not to call any evidence in support of his defence.

Reply

At the conclusion of the defence, the College did not call any reply evidence.

Decisions and Reasons

Onus and Standard of Proof

The College bears the onus of proving the allegations against Mr. Bergez as set out in the Notice of Hearing in accordance with the standard of proof applied by the Panel, namely a balance of probabilities based upon clear, convincing and cogent evidence accepted by the Panel.

Allegation 1:

Mr. Bergez Permitted, counselled or assisted persons who are not registered under the Act to perform an act that should be performed by a member, namely, prescribing and/or dispensing for vision or eye problems, subnormal vision devices, contact lenses or eyeglasses other than simple magnifiers;

Finding

The Panel finds Mr. Bergez guilty of allegation 1.

Reasons:

The Panel has relied on evidence from the hearing. The Panel has also relied on prior judicial findings of Justice David Crane, November 2006. A central point of the case from the College is that it is in fact Mr. Bergez who is responsible for the actions that have transpired at all the Great Glasses locations.

The Panel relies on prior judicial findings that Mr. Bergez is in fact the directing mind and ultimate owner of Great Glasses (Crane Decision, para.2). There were several pieces of evidence that arose through the case that support this finding as well.

Ms. Caroline Mac-Issac Power confirmed in her testimony (ex-chief, November 17, 2008, p50) that Mr. Bergez was in fact the only optician of record for all Great Glasses locations for 2005 and 2006. His College of Opticians renewal form (*The Agreed Joint Brief of Documents, Volume 3 Tab 12 and 13*) indicated that he was the "Optician for any and all current and future Great Glasses locations".

Ms. Janice Finlay of Green Shield Canada testified that when Green Shield sent letters to several locations of Great Glasses asking who the dispensing optician was, all forms that were returned indicated that Mr. Bruce Bergez was the dispensing optician (*Witness Transcript Oct 28, 2008, page 141*).

In cross examination of Ms. Finlay, Mr. Bergez himself confirmed that although his registration certificate was subject to an interim suspension that was placed in effect November 16, 2006, this did not change his status as the founder and general manager of Great Glasses and was thus authorized to sign all the claim forms on behalf of Great Glasses.

Ms. Finlay confirmed in her testimony that Mr. Bergez attended the Green Shield offices in Windsor and met with her Claims Team to discuss why Green Shield had discontinued its 'pay direct relationship' with Great Glasses. Mr. Bergez held himself as the representative for Great Glasses at that meeting.

Ms. Finlay testified that during that meeting with Mr. Bergez she asked him directly if there were any optometrists or physicians working in the stores to which he replied 'no' (*Witness Transcript, Oct 28, 2008, page 139*).

It was confirmed during the testimony of Mr. Hayes and Mr. Moore that even though Mr. Bergez was suspended by the College of Opticians he was still signing official correspondence written to the College and College Investigators on behalf of Great Glasses. There were two letters (*The Agreed Joint Brief of Documents, Volume 6, Tab 36 & 37*) that were written to the College investigators warning them that they were trespassing on Great Glasses locations. Mr. Bergez signed these letters.

Further, Bruce Bergez has described himself as the "founder and general manager" of the Great Glasses franchise. (*The Agreed Joint Brief of Documents, Volume Two, Tab 10, page 120*).

Using the standard of proof of the balance of probabilities and relying on prior judicial findings of Justice Crane (Crane decision, para.2), the Panel concludes that Mr. Bergez is in fact the directing mind and operator of all Great Glasses locations and is thus accountable for the mode of operation of his enterprise and the actions of his staff. These staff members were unregistered under the Act to dispense eyewear or prescribe for eyewear or contact lenses.

Mr. Marc Raymond was called to testify as to the definition of dispensing which he defined as:

- (a) Evaluating the needs of the patient and the uses that the glasses are going to be put to; (*ex-chief Nov 17, 188-9*)
- (b) Advising on the type of design of the lens; (*exh 3, pg 3*)
- (c) Advising the person on the correct size of frame that they need; (*ex-chief Nov 17, 190*)
- (d) Taking measurements and conducting tests on the patient to arrive at the correct eyeglass frame and correct lens power; (*ex-chief Nov 17, 178*)

All patients testified that they were served by staff of Great Glasses who helped select eyewear, counselled the patient, prepared, ordered and adjusted the eyewear. None of these staff members were registered with the College of Opticians of Ontario. These acts of dispensing are considered controlled acts under the Registered Health Professions Act of 1991 (*Section 27, sub-section 9*) and may only be carried out by members of a regulated College recognized under this Act. Ultimately these staff members were acting under the direction / counsel of the Great Glasses management which we earlier concluded was Mr. Bergez and therefore the panel holds Mr. Bergez accountable for allowing these acts which are a breach of the Act.

Anne Moore, Patricia O'Connor, Sean Battersby, Ilonka Van Steenwyk, Maria Muir, Nadia Nicholson, William Mulder, Janet Power, Sharon Ang and Jie Chao all testified

that they were served by staff of Great Glasses who not only helped select eyewear, counselled the patient, prepared, ordered and adjusted the eyewear for these patients, but also had eye tests performed by them. The prescriptions found in the Agreed Joint Brief of Documents for Patricia O'Connor (vol 2, tab c), Ilonka Van Steenwyk (vol 2, tab g), Nadia Nicholson (vol 2, tab k) further confirm that Mr. Bruce Bergez's signature appears on the results of these eye exams. These results were treated as prescriptions by the staff of Great Glasses and were used to fabricate the eyewear for these patients.

If the results of these eye tests were to be used in the fabrication of eye wear they would have to be signed by an authorized prescriber which Mr. Bergez is not, as he is neither a member of the College of Physicians and Surgeons nor a member of the College of Optometrists of Ontario. Since these eye tests were signed by Mr. Bergez, they cannot be recognized as a valid prescription and therefore it was improper for his staff at Great Glasses to fabricate and dispense eyewear from these results.

This panel holds Mr. Bergez responsible for the conduct of his business, and finds that he permitted, counselled or assisted persons who are not registered under the Act to perform an act that should be performed by a member.

Mr. Bergez' argument:

Mr. Bergez brought up the following points through-out his cross-examinations and his closing statement;

- 1) That Mr. Bergez might have been on the premises somewhere in the back.

Although Mr. Bergez asked Sean Battersby and Ilonka Van Steenwyk under cross-examination (*Witness Testimony, Oct 29, 2008 page 59 & page 69-70*) if they had a clear view of all areas of the individual stores and implied that perhaps Mr. Bergez could have been on the premises in some adjacent room, neither of these witnesses confirmed seeing or being served by Mr. Bergez at any point in their Great Glasses experience.

- 2) The individual Great Glasses stores do not belong to him specifically and therefore he should not be part of this hearing (*The Agreed Joint Brief of Documents, Volume 6, Tab 39, parag.86*).

As the panel has previously stated, it finds that the College has established that Mr. Bergez is the directing mind and ultimate owner and therefore regardless of the corporate ownership structure, the panel holds Mr. Bergez responsible for the conduct of Great Glasses and its staff.

- 3) Mr. Bergez referenced O-Reg 828/93 section 1, sub-section 4 that "It is deemed professional misconduct to delegate a controlled act unless the delegation is authorized by the regulations". He noted that the College of Opticians has a

policy that has been in effect since 1998, and not a regulation, governing delegation.

The allegations, facts and testimony of this case do not suggest that delegation was a factor. College Counsel never suggested it took place and it was not raised by the Defence during cross-examination.

Allegation 2:

Mr. Bergez obstructed a Complaints Committee investigation by not allowing an investigator appointed by the Registrar under s. 75 of the Code to obtain patient records and or information from a witness;

Finding

The panel finds Mr. Bergez guilty of Allegation 2.

Reason

The panel finds that Mr. Bergez did in fact breach Section 76(3) of the Health Professions Procedural Code that states that no one "shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to [an] investigation" into whether or not a member has committed an act of professional misconduct.

It was made evident through the testimony of Ms. Caroline MacIsaac Power, Mr. Wayne Moore and Mr. Mike Hayes that pursuant to section 75 of the Health Professions Procedural Code, the Registrar, Ms. MacIsaac-Power rightfully appointed Mr. Moore and Mr. Hayes to attend various locations of Great Glasses and obtain the original patient records for specific patients.

At each store that the investigators attended staff members refused to provide the records requested by the investigators. The investigators in each of the visits rightfully identified themselves and provided copies of the letter of appointment from the College.

Shortly after the visits Mr. Bergez wrote to the College of Opticians, Mr. Moore and Mr. Hayes and advised them that the investigators were barred from entering the Great Glasses stores and cited the Trespass to Property Act (R.S.O. 1990, Ch T.21.) Copies of these letters are found in The Agreed Joint Brief of Documents, Volume 6, TAB 36 and 37.

Mr. Bergez reasoned that the letter of Appointment from the Registrar of the College of Opticians of Ontario was issued on March 21, 2007 but since his Certificate of Registration was suspended on November 16, 2006, he was no longer in good standing and therefore was no longer a Member of the College and thus not subject to its Policies, By-Laws and Regulations. He then argued that the Registrar was not able to assign an investigator to the premise of a 'Non-Member'.

The Panel agrees with The College's argument that it has continuing jurisdiction on issues of misconduct (*The Health Professions Procedural Code, Section 14, (1)* and that under section 87 of the Health Professions Procedural Code, the College is allowed to get court orders to direct any member of the public to cease and desist from performing any controlled acts.

Mr. Bergez reasoned that he could not be in two locations at the same time. Since the investigators converged on two locations simultaneously, Mr. Bergez contended that the Prosecution could not make a case that he, Mr. Bergez was at fault for not cooperating with investigators.

Mr. Bergez himself signed the letters to the College and the two investigators barring them from entry. Again going back to the primary focus of Allegation 1, it has been clearly established that Mr. Bergez was the directing mind of the Great Glasses operation and continued to act as the representative for Great Glasses. He is the one who signed the trespass letters and although he was not present during the visits by the investigators, his staff were directed not to cooperate.

Further, in his closing submissions, Mr. Bergez confirmed that no documents were ever given to the investigators.

Mr. Bergez' argument:

- 1) Mr. Bergez made the claim that Mr. Bergez is not bound by the College Standards or Bylaws because he was not a member at the time of the investigation as he was suspended.

Though as Mr. Bergez suggests, Section 13, (2) of the Health Professions Procedural Code does state that a person whose certificate of registration is suspended is not a member, the code goes on to state in Section 14 (2) that a person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension.

- 2) That Mr. Bergez could not have obstructed both investigators at once since Mr. Bergez could not be in two different places at once when both investigators showed up simultaneously.

The Panel finds that since Mr. Bergez himself sent Trespass letters to all parties, signed on behalf of Great Glasses, that he must be held ultimately responsible for barring access to the investigators.

Allegation 3:

Engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

Finding:

The panel finds Mr. Bergez guilty of Allegation 3.

Reasons:

There are several reasons why the Panel made a finding of guilt in regard to this allegation including:

- a) Mr. Bergez is obliged as a member of the College of Opticians to abide by its Standards of Practice, Codes, By-Laws and Regulations. Mr. Bergez breached several of these Standards including but not limited to, failing to keep proper patient records, failing to allow College Investigators on to the premises and failing to cooperate with a College investigation, allowing the preparation of eyeglasses without a proper prescription and allowing unauthorized persons to dispense while under interim suspension.
- b) Mr. Bergez falsely advertised 'Free Eye Tests' or 'Free Eye Exams' which in fact the patient did not receive. Instead they received a vision test from the staff of Great Glasses, the results of which were written on a document bearing the authorization of Mr. Bergez. These results were then used to generate prescription eye wear, even though Mr. Bergez is not a member of the College of Physicians and Surgeons nor a member of the College of Optometrists of Ontario and is therefore not authorized to prescribe prescription eyewear.

The lack of a recognized prescriber performing a comprehensive eye examination puts the public at risk due to the mistaken belief that they have been thoroughly screened for ocular disease and the false sense of comfort stemming from that belief. The panel takes offence at the deception of the public and the inherent risks of such a deception.

Mr. Bergez' argument:

- 1) If Mr. Bergez did not dispense the individual glasses, how can Mr. Bergez be found guilty of dishonourable conduct:

As stated previously, the panel has concluded that Mr. Bergez is the directing mind and ultimate owner of Great Glasses and that he permitted unauthorized acts to be performed by non-registered individuals.

This Panel has reviewed all the evidence put forth in front of it both by the Counsel of the College of Opticians as well as the arguments put forward by Mr. Bergez.

In respect of the following allegations against Mr. Bergez that he:

- (a) permitted, counselled or assisted persons who are not registered under the Act to perform an act that should be performed by a member, namely, prescribing and/or dispensing for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers;
- (b) obstructed a Complaints Committee investigation by not allowing an investigator appointed by the Registrar under s. 75 of the Code to obtain patient records and or information from a witness;
- (c) engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

The Panel makes a finding of professional misconduct on all three of these allegations.

The Panel further finds that Mr. Bergez breached sections 1, 2, 4, 5, 26, 27, 28, 29 of Regulation 828/93 for the following reasons:

- 1. Contravening a term, condition or limitation imposed on the member's certificate of registration.**

Mr. Bergez was the optician of record as was indicated on the insurance claim forms even though Mr. Bergez' certificate of registration was under interim suspension as of November of 2006 (ex-chief, Caroline MacIsaac-Power, Nov. 17, p.55) thus preventing him from carrying out or delegating any controlled acts

such as dispensing of eyeglasses, afforded to a member in good standing of the College.

In his response to the complaints by Green Shield and Manulife Financial, Mr. Bergez indicated that the dispensing optician for the referenced individuals was, in fact, himself (Tab 9 Joint Brief of Documents, p. 166, Tab 11 Joint Brief of Documents, p.44) even though he was under interim suspension as of November 16, 2006.

This clearly illustrates that Mr. Bergez ignored the limitation of the interim suspension on his certificate of registration and continued to hold himself out as an active member of the College.

2. Contravening a standard of practice of the profession.

Guidelines for Professional Standards of Practice (Tab 15 of the Joint Brief of Documents) set out expectations of the College of Opticians in respect of the practice of Opticianry. The Standards set out various requirements regarding the practice of dispensing including specific acts that an optician must perform which include but are not limited to:

- a) opticians must establish a professional relationship with a person prior to dispensing to that person (Tab 16 of the Joint Brief of Documents, p2)
- b) opticians must identify himself or herself to any patient to whom the member dispense and within the record of care made and maintained by the member about the patient (Tab 16 of the Joint Brief of Documents, p.2). Page 7 of the Standards sets out that a Patient History must be maintained and outlines pertinent information that must be recorded.

With regards to (a), Anne Moore (ex-chief, Oct 28, p.62), Patricia O'Connor (ex-chief, Oct 28, p.113) and Ilonka Van Steenwyk (ex-chief, Oct 29, p.67) all testified that they did not deal with Mr. Bergez and were not attended upon by an optician, optometrist or physician. Clearly a breach of the Standards.

With regards to (b), in the course of its investigation into the activities of Mr. Bergez and Great Glasses, the College wrote to Mr. Bergez asking him for several patient files. By letter dated November 20, 2006, Mr. Bergez responded to the College indicating that "[t]he owners of Great Glasses have elected to not keep", among

other things, patient health records, copies of all prescriptions and dates, and details of the patient's visits (Tab 9 of the Joint Brief of Documents, p.174) . This again is a clear breach of the Standards that govern the profession.

4. Delegating a controlled act unless the delegation is authorized by the regulations.

Section 27, paragraph (2), sub 9 of the RHPA (Tab 1 of Joint brief of legislation) states "Prescribing or dispensing, for vision or eye problems, subnormal devices, contact lenses or eye glasses other than simple magnifiers" is a controlled act to be carried out only by authorized persons under the ACT.

The events at issue in this matter all occurred prior to 2007.

Caroline Maclsaac-Power testified that, prior to 2007, Bruce Bergez was the only optician registered with the College as having Great Glasses as his place of practice (ex-chief of Caroline Maclsaac-Power, November 17, 2008, p.50).

On the claim forms submitted by the patients of Green Shield, the only optician identified on any of the forms is Bruce Bergez (as seen on Green Shield claim forms located in Tabs 9 and 10 of Joint Brief of Documents). In his response to Green Shield and Manulife Financial, Mr. Bergez indicated that the dispensing optician for the referenced individuals was, in fact, himself (tab 9 of the Joint Brief of Documents, p.166, tab 11 of Joint Brief of Documents, p.44).

Based on this evidence the Panel concludes that Mr. Bergez is in fact the Optician authorized to perform the controlled act of set out in Section 27, paragraph (2) sub 9 of the RHPA.

Furthermore, Bruce Bergez has described himself as the "founder and general manager" of the Great Glasses franchise (Tab 10 of the Joint Brief of Documents, p. 120). As set out by Justice Crane, the court concluded that he was, in fact, the "directing mind and ultimate owner of the undertaking trading under the name Great Glasses" (Crane decision at para. 8) with "the right to determine the manner and mode of business by each of the franchisees."

This makes it evident to the Panel that Mr. Bergez had the ability to control the dispensing practices at all Great Glasses stores.

Anne Moore (ex-chief, October 28, 2008, p.62), Patricia O'Connor (ex-chief, October 28, 2008, p.113), Sean Battersby (ex-chief, October 29, 2008, p.58) and Ilonka Van Steenwyk (ex-chief, October 29, 2008, p.67) all testified that they had never met nor were served by Mr. Bergez but, in fact, were served by the staff working at Great

Glasses. Two staff members of the Great Glasses store located at 50 Dundurn Street, Hamilton, confirmed that “technicians”, not opticians, do all the dispensing of prescription eyewear at this store (Tab 11 of the Joint Brief of Documents, p.1 and 4). In addition the Ontario Superior Court of Justice concluded that “the dispensing of subnormal eyewear is done at Great Glasses without any direct involvement of an optician” (Crane decision at para. 85).

When Green Shield Insurance Company started to reject insurance claims by patients of Great Glasses stores, it was Bruce Bergez who attended at its office, on behalf of all Great Glasses stores, to discuss this developments (ex-chief, Janice Finlay, October 28, 2008, p.137). During the meeting, Mr. Bergez made it clear that he knew that non-opticians were dispensing from Great Glasses locations. In fact, he attempted to convince the Green Shield representatives that “there was no need for an optician” to be present at every optical outlet in order for legal dispensing to occur (ex-chief, Janice Finlay, October 28, 2008, p. 138-139).

Based on the testimony of the patients and Ms. Janice Finlay and the prior judicial findings, the Panel concludes that persons not authorized under the act to perform the controlled act of dispensing eyewear were, in fact, doing so under the direction of Mr. Bergez thus breaching Section 4 of Regulation 828/93.

5. Permitting, counselling or assisting anyone who is not registered under the Act to perform an act which should be performed by a member.

The staff at Great Glasses were not registered under the Act to prescribe or dispense eyewear yet Mr. Bergez, the ultimate owner and controlling mind of Great Glasses allowed his staff to perform these tasks on members of the public.

26. Contravening any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.

Again, under the Act, the controlled act of dispensing eyewear other than simple magnifiers must be done only by persons authorized under the act to do so. The staff at Great Glasses were not authorized to perform the act of dispensing.

As well, Section 76(3) of the Code provides that no one “shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to [an] investigation” into whether or not a member has committed an act of professional misconduct.

Pursuant to section 75 of the Code, the Registrar of the College duly appointed Wayne Moore and Mike Hayes to attend various Great Glasses stores and obtain patient records for certain patients (ex-chief of Caroline MacIsaac-Power, Nov 17, p.51-53). At each store staff members refused to provide the records requested. Mr. Bergez informed the investigators and the College that under provisions of the *Trespass to Property Act* (R.S.O. 1990, Ch T.21.) the investigators were barred from entering Great Glasses stores.

Since the investigators were duly appointed under a right or authority conferred by law, being provisions of the *RHPA*, the *Trespass to Property Act* does not apply to the investigators and thus it was professional misconduct for Mr. Bergez to obstruct the investigators.

27. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the Public Hospitals Act if,

- i. the purpose of the law, by-law or rule is to protect public health, or**
- ii. the contravention is relevant to the member's suitability to practice.**

The RHPA and the Opticianry Act set out Rules and Regulations with the purpose to ensure and safeguard the health of the public of Ontario. To breach the RHPA or Opticianry Act constitute a breach of O.Reg. 828/93 s. 27. The Panel has concluded above that Mr. Bergez has, in fact, breached the RHPA by allowing unauthorized persons to perform controlled acts and obstructing duly appointed investigators of the College. The Panel therefore concludes that Mr. Bergez did, in fact, breach O.Reg 828/93 s. 27.

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.

The conduct of Mr. Bergez in not allowing Inspectors of the College to enter his premises, not keeping patient records, allowing unregistered staff to prescribe and dispense eyewear and misleading the public to think they were receiving a proper eye examination are all actions in the course of practicing opticianry that would be reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The members of the College are entrusted with the health of their clients and are expected to put the need of their clients ahead of their needs and financial interests. Mr. Bergez's actions of deceiving the public reflect poorly on the entire profession and would be seen as disgraceful, dishonourable or unprofessional.

29. Advertising or permitting advertising with respect to the member's practice in contravention of the regulations. O. Reg. 828/93, s. 1; O. Reg. 216/94, s. 1.

Opticians are prohibited from advertising, with respect to their practice or place of practice, anything that is false or misleading (O.Reg. 219/94, Part II, section 6.). The advertising of "Free Eye Examinations" is misleading to the public and a breach of this regulation.

In a previous judicial proceeding, the Court concluded that this practice of advertising free eye examinations was a deceptive practice, for which Mr. Bergez was responsible:

The respondent, Bruce Bergez is knowledgeable, even, indeed sophisticated, in his facility with the Ontario health care legislation. He knows that the term 'eye examination' is defined in the Optometry Act.

The Great Glasses blanket advertising of free eye examination is, in fact to the certain knowledge of Mr. Bergez, a gross deception of the public, putting his customers at risk of their health, done solely for the commercial profit of the respondents (Crane Decision at para. 84).

Several patients including Patricia O'Connor testified that they attended Great Glasses for a free eye examination as a basis to obtain prescription eyeglasses (ex-chief Patricia O'Connor, Oct 28, p108.). This breach put the public at risk of harm as they were misled that they received a proper eye examination from a qualified registered member.

Again the Panel finds the Mr. Bergez contravened the regulations of the profession.

Accordingly, the panel finds Mr. Bergez, pursuant to s. 51 of the Regulated Health Professions Act, guilty of professional misconduct.

The parties are hereby directed to arrange a date for the panel to hear the parties' submissions on penalty.

I, Fazal Khan, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Fazal Khan
Chair, Discipline panel

Nov. 11/2009

Date

Gloria Baltazar
Derick Summers
Librado Ibe Jr.
Marilyn Fron