

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

PANEL:	Robert Vezina, RO	Chairperson
	Michelle Rivais, RO	Member
	Hugh Corbett	Public Member
	Eve Hoch	Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	Martin Zatovkanuk for
)	College of Opticians of Ontario
- and -)	
)	Daniel O’Reilly, unrepresented, appearing
DANIEL O’REILLY)	in person
REGISTRATION C-1336)	
)	
)	Luisa Ritacca
)	Independent Legal Counsel
)	
)	Heard: October 16, 2013

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on October 16, 2013 at the College of Opticians of Ontario (“the College”) at Toronto.

The Member was present and appeared on his own behalf without counsel, although advised of his right to be represented by counsel in the Notice of Hearing .

The Allegations

The allegations against Daniel O’Reilly (the “Member”) were set out at Schedule A of the Notice of Hearing, dated April 25, 2013 (Exhibit 1). Schedule A is attached hereto at the end of these Reasons for Decision.

In summary, the Member is alleged to have engaged in conduct in the course of practising opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. In particular, it is alleged that the Member allowed

persons who were not registered opticians or registered optometrists to dispense eyeglasses at the Member's store, Specs Appeal, in Guelph, Ontario.

Member's Plea

At the outset of the hearing, counsel for the College advised the panel that the parties had reached an agreement and as such the hearing would proceed by way of an Agreed Statement of Facts.

The Member admitted the allegations as set out in the Notice Hearing. The panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

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

1. Daniel O'Reilly ("Mr. O'Reilly") is a registered optician in Ontario and has worked as an optician since 1984.
2. Mr. O'Reilly is the owner of Specs Appeal. Specs Appeal had a location at 370 Stone Road, Guelph, Ontario (Specs Appeal).
3. Withdrawn
4. In or around April 2011, the College received an anonymous complaint that dispensing was occurring at Specs Appeal by people who were not registered opticians or registered optometrists.
5. In or around August 2011, an undercover College investigator attended Specs Appeal. The only person working at Specs Appeal was ST who at the time was a student optician. ST was not a registered optometrist or a registered physician. ST dispensed eyeglasses to the undercover College investigator.
6. When the College invited Mr. O'Reilly to comment on concerns involving the dispensing of eyeglasses by ST, Mr. O'Reilly acknowledged that ST was not a registered optician and that he did in fact dispense eyeglasses to the undercover College investigator.
7. The parties agree that the conduct described above constitutes professional misconduct on the part of Mr. O'Reilly pursuant to Ontario Regulation 828/93, section 1:
 1. Paragraph 28 – He engaged in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

At the hearing, the Member acknowledged the facts as set out in the Agreed Statement of Facts and in particular that ST was working alone in the Member's store, unsupervised.

Decision

The panel considered the Agreed Statement of Facts and was satisfied that the facts as admitted constituted professional misconduct as alleged in the Notice of Hearing. As such, the panel found that the Member committed an act of professional misconduct as defined in paragraph 28 of section 1 of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34, in that he:

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

Reasons for Decision

The panel accepted the facts as admitted by the Member and on the basis of those facts, was satisfied that the Member had, by allowing an unsupervised registered student optician to dispense eyeglasses to an undercover College investigator, engaged in conduct, in the course of practicing opticianry, that would be regarded by the members as disgraceful, dishonourable or unprofessional. The Act and regulations are very clear. All opticians ought to know that dispensing eyeglasses is a controlled act and students are not allowed to do this unsupervised. It is unacceptable to allow such conduct. It jeopardizes public safety and public confidence in the profession.

Penalty

The College presented the panel with a Joint Submission as to Penalty and Costs (Exhibit 3). The College and the Member confirmed their agreement with the submission proposed. The Joint Submission as to Penalty and Costs provides as follows:

1. The College of Opticians of Ontario (“the College”) and Daniel O’Reilly (“the Member”) agree to an order by the Discipline Committee as follows:
 - a) The Member shall be required to appear before the panel to be reprimanded, the fact of which shall appear on the College register.
 - b) The Discipline Committee shall direct the Registrar to suspend the Member’s certificate of registration for 2 (two) months, to commence on a date to be set by the Registrar.
 - c) The Registrar will suspend 2 (two) weeks of the suspension ordered in paragraph 1(b) if the Member, in the opinion of the Registrar, successfully completes the course specified in paragraph 1(d) of this order before April 30, 2014. The Member must submit proof of successful completion to the Registrar. Failing this, the final 2 (two) weeks of the suspension will continue to run consecutive to the first 6 (six) weeks for a total continuous suspension of 2 (two) months.

- d) The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring him:
 - i. To complete a course, approved by the Registrar, in professional ethics and/or jurisprudence, the cost of which shall be borne by the member. This course must be completed no later than one year from the date of this order.
- e) The Member will sign an undertaking that he will not permit, counsel or assist unauthorized persons to dispense eyeglasses.

Penalty and Costs Decision

The panel accepts the Joint Submission as to Penalty and accordingly orders:

- a) The Member shall be required to appear before the panel to be reprimanded, the fact of which shall appear on the College register.
- b) The Discipline Committee directs the Registrar to suspend the Member's certificate of registration for 2 (two) months, to commence on a date to be set by the Registrar.
- c) The Registrar will suspend 2 (two) weeks of the suspension ordered in paragraph 1(b) if the Member, in the opinion of the Registrar, successfully completes the course specified in paragraph 1(d) of this order before April 30, 2014. The Member must submit proof of successful completion to the Registrar. Failing this, the final 2 (two) weeks of the suspension will continue to run consecutive to the first 6 (six) weeks for a total continuous suspension of 2 (two) months.
- d) The Discipline Committee directs the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring him:
 - i. To complete a course, approved by the Registrar, in professional ethics and/or jurisprudence, the cost of which shall be borne by the member. This course must be completed no later than one year from the date of this order.
- e) The Member will sign an undertaking that he will not permit, counsel or assist unauthorized persons to dispense eyeglasses.

With respect to costs, the panel orders the Member to pay the College a portion of its costs in this matter in the amount of \$2000.00 within 30-days of the date of the panel's order.

Reasons for Penalty Decision

The panel concluded that the Joint Submission as to Penalty and Costs was reasonable and appropriate having regard to the circumstances of the case and the gravity of the misconduct. The penalty addresses the issue of both the specific deterrence of the Member with regard to this type of misconduct, as well as general deterrence of the membership at large. The panel was also satisfied that the penalty will adequately protect the public interest and will foster public confidence in the regulation of opticianry. Every member of the public should be entitled to expect that when they engage the services of a registered optician, those services will meet all applicable requirements,

including that any services delivered by a registered student optician will be subject to proper supervision.

In coming to our conclusion regarding the adequacy of the penalty, we considered, among other things, the fact that the Member had cooperated with the College during both the course of the investigation and this proceeding. By entering into the Agreed Statement of Facts and admitting his misconduct, the Member demonstrated that he was accepting responsibility for his actions and avoided the necessity of the College incurring the time, expense and resources of conducting a full hearing. As a term of the joint resolution, the Member will be paying \$2,000 in satisfaction of a portion of the College's costs in this matter and is also required to take, at his own expense, a course acceptable to the Registrar within one year.

During the course of his submissions, the Member apologized for his actions and expressed regret for allowing the registered student to dispense eyeglasses without adequate supervision. The Member has no prior disciplinary history with the College and indicated that he has carried on business as an optician for 25 years. The Member stated that the misconduct occurred while he was undergoing a difficult transition in his personal life and was also experiencing difficulties securing sufficient staffing for his business. While these factors do not excuse or condone the misconduct at issue, we have taken them into account, along with the other factors discussed above, in arriving at our assessment as to the adequacy of the penalty in this case.

Having waived his right to an appeal, the panel administered the reprimand to the Member at the close of the hearing.

I, Robert Vezina sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Chairperson

November 22, 2013
Date

Robert Vezina, RO
Michelle Rivais, RO
Hugh Corbett
Eve Hoch

Chairperson
Member
Public Member
Public Member

Schedule "A"

1. Daniel O'Reilly ("Mr. O'Reilly") is a registered optician in Ontario and has worked as an optician since 1984.
2. Mr. O'Reilly was the owner of Specs Appeal which was located at 370 Stone Road, Guelph, Ontario (Specs Appeal).
3. From approximately April 19, 2011 to November 15, 2011 Mr. O'Reilly's certificate of registration was suspended as a result of non-payment of fees (the "Suspension").
4. In or around April 2011, the College received an anonymous complaint that dispensing was occurring at Specs Appeal by people who were not registered opticians or registered optometrists.
5. During the Suspension, particularly, in or around August 2011, an undercover College investigator attended Specs Appeal. The only person working at Specs Appeal was ST who at the time was a student optician. ST was not a registered optometrist or a registered physician. ST dispensed eyeglasses to the undercover College investigator.
6. When the College invited Mr. O'Reilly to comment on concerns involving the dispensing of eyeglasses by ST, Mr. O'Reilly acknowledged that ST is not a registered optician and that he did in fact dispense eyeglasses to the undercover College investigator.
7. As a result of paragraphs 3-5, the College alleges that Mr. O'Reilly engaged in the following act of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a. He engaged in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).

8. Further particulars of the specified allegation of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Mr. O'Reilly in support of the allegations in the Notice of Hearing.