



**IT IS ALLEGED THAT** you have committed acts of professional misconduct as defined in section 5 (2) of the *Opticianry Act, 1991*, S.O. 1991, c. 34 and paragraphs 2, 5, 26 and 28 of section 1 of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34, in that you:

- (a) Contravened standards of practice of the profession;
- (b) Permitted, counselled or assisted someone who is not registered under the *Opticianry Act, Optometry Act, or Medicine Act* to perform an act which should be performed by a member;
- (c) Dispensed eyeglasses for vision or eye problems that were not simple magnifiers without a prescription from a physician or optometrist;
- (d) Contravened section 27 of the *Regulated Health Professions Act*, S.O. 1991, c. 18 (the "RHPA") by performing the controlled act of prescribing eyeglasses without being authorized by a health profession Act to do so; and
- (e) 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.

#### Member's Plea

The Member admitted the allegations set out in the Notice of Hearing. The panel received a written plea inquiry which was signed by the Member. The panel also conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

### Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit #2) which provided as follows:

#### **The Member**

1. At all material times, Herbert Diestler ("the Member") was a member of the College of Opticians of Ontario ("the College").
2. The Member is not and never has been a member of the College of Optometrists of Ontario or of the College of Physicians and Surgeons of Ontario.
3. The Member does not currently hold and has never previously been granted refraction status by the College.
4. At all material times, the Member was the owner and operator of Woodstock Optical, located at 419 Dundas Street, Woodstock, Ontario ("Woodstock Optical").

#### **Illegal Dispensing and Prescribing by Employee**

5. At all material times, Wanda Crawford ("Ms. Crawford") was an employee at Woodstock Optical and the Member was her employer.
6. Ms. Crawford is not and never has been a member of the College, the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario.
7. On or about January 7, April 29 and/or August 4, 2010, Ms. Crawford, while working at Woodstock Optical, performed acts of prescribing and dispensing on CA, a patient, which acts should only be performed by a licensed individual.

8. The Member knew or should have known that Ms. Crawford was prescribing and dispensing on or about January 7, April 29 and/or August 4, 2010 without being authorized to do so.
9. The Member permitted, counseled or assisted Ms. Crawford to prescribe and dispense on or about January 7, April 29 and/or August 4, 2010 without being authorized to do so.
10. On or about October 26 and 29, 2010, Ms. Crawford, while working at Woodstock Optical, performed acts of prescribing and dispensing on BB, a patient, at Woodstock Optical, which acts should only be performed by a licensed individual.
11. The Member knew or should have known that Ms. Crawford was prescribing and dispensing on or about October 26 and 29, 2010 without being authorized to do so.
12. The Member permitted, counseled or assisted Ms. Crawford to prescribe and dispense on or about October 26 and 29, 2010 without being authorized to do so.

**Illegal Refraction, Prescribing and Dispensing by Member**

13. On or about November 3, 2010, the Member performed refractometry on BW, a patient, when the Member had not applied for or received a refracting designation from the College.
14. On or about November 3, 2010, the Member prescribed and/or prepared a prescription for BW based on the results of the refraction.
15. After performing refraction on BW, the Member dispensed eyeglasses to BW

based on the results of a refraction performed by him without a prescription from an optometrist or physician, in contravention of section 27 of the *Regulated Health Professions Act* 1991, c. 18 which prohibits the performance of the controlled act of prescribing eyeglasses without being authorized by a health profession Act to do so.

16. The Member never informed BW that he was not permitted to perform refractions or To prescribe eyeglasses and that BW should obtain a prescription from an optometrist or physician.
17. The Member misled BW into believing that he was authorized to perform refractometry and to prescribe eyeglasses by so performing and prescribing and failing to inform BW otherwise.

#### **Patient Files**

18. From on or about January 7, 2010 to on or about December 8, 2010, the Member contravened a standard of practice of the profession by failing to maintain complete and accurate patient records in accordance with the *Professional Standards of Practice for Opticians in the Province of Ontario, Standard 6: Records*, in that the records contained incorrect or incomplete information and/or did not contain information required by the standard, for the following patients: CA, EB, BB, CC, HC-B, TC, MG, DH, AI, DI, JK, CM, TP, VR, SS, DS, SS (2), ET, KT, SV, and BW.

## **False or Misleading Information**

19. During the course of the investigation by the Inquires, Complaints and Committee of the College into these matters, the Member provided false or misleading information to the College.
20. However, since September 2012, the Member has co-operated with the College.
21. From on or about January 7 to on or about December 8, 2010, the Member practiced opticianry under conditions that adversely affected the quality of the treatment provided by him in that he dispensed based on eye examinations and/or pupil distance measurements performed by unauthorized individuals. In so doing, Mr. Diestler breached clause 13 of the *Code of Ethics* applicable to members of the College that states that opticians "Will not practice under conditions that may adversely affect the quality of their treatment.
22. The parties agree that the conduct described above constitutes professional misconduct on the part of the Member pursuant to paragraph 2 (contravening a standard of the profession), paragraph 5 (permitting counseling or assisting someone who is not registered under the *Opticianry Act*, *Opticianry Act* or *Medicine Act* to perform an act which should be performed by a member), paragraph 26 (contravening any provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts) and/or paragraph 28 (engaging in conduct or performing an act, in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College as disgraceful, dishonourable or unprofessional) of section 1 of Ontario Regulation 828/93 under the *Opticianry Act*, S.O. 1991, c.34.

### Decision

The panel considered the Member's admissions, together with the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member committed acts of professional misconduct as alleged in the Notice of Hearing.

### Reasons for Decision

The Agreed Statement of Facts was clear and the panel has accepted the facts as set out therein. The panel has reviewed the Agreed Statement of Facts and the member's admission and finds that the Agreed Statement of Facts supports a finding of professional misconduct as set out in the allegations. The panel does so find that the member has committed professional misconduct.

### Penalty

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

1. The College of Opticians of Ontario ("the College") and Herbert Diestler ("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 ten (10) weeks, to commence on February 6, 2013.
  - c) 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 written self-evaluation of his documentation practices, no later than April 6, 2013, by reviewing ten (10) patient records using materials provided by the College.
  - ii. to meet with the College's Practice Advisor, or another appointed College representative, at the College, no later than May 6, 2013, to discuss the self-evaluation referred to in paragraph 1(c)(i) and the Discipline Committee's findings in this matter.
- d) The Member will sign an undertaking that he:
- i. will not permit, counsel or assist unauthorized persons to dispense eyeglasses;
  - ii. will not dispense without a prescription from an optometrist or physician;
  - iii. will not perform refractions unless or until such time as he is granted refracting status by the College;
  - iv. will dispose of any automated refracting equipment in his possession, including Eyelogic or other machine;
  - v. will comply with the College's Standard on Records;
  - vi. will fully cooperate with any subsequent requests from the College without delay and without misleading the College or its representatives in any manner.



- e) The Member is required to pay the College a portion of its costs in this matter in the amount of \$2500 within 30 days of the date of this order.

#### Penalty Decision

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

- 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 ten (10) weeks, to commence on February 6, 2013.
- c) 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 written self-evaluation of his documentation practices, no later than April 6, 2013, by reviewing ten (10) patient records using materials provided by the College.
  - ii. to meet with the College's Practice Advisor, or another appointed College representative, at the College, no later than May 6, 2013, to discuss the self-evaluation referred to in paragraph 1(c)(i) and the Discipline Committee's findings in this matter.
- d) The Member will sign an undertaking that he:
  - i. will not permit, counsel or assist unauthorized persons to dispense eyeglasses;
  - ii. will not dispense without a prescription from an optometrist or physician;

- iii. will not perform refractions unless or until such time as he is granted refracting status by the College;
  - iv. will dispose of any automated refracting equipment in his possession, including Eyelogic or other machine;
  - v. will comply with the College's Standard on Records;
  - vi. will fully cooperate with any subsequent requests from the College without delay and without misleading the College or its representatives in any manner.
- e) The Member is required to pay the College a portion of its costs in this matter in the amount of \$2500 within 30 days of the date of this order.

Reasons for Penalty Decision

The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his/her actions.

I, David T.J.Milne, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Chairperson  
David T.J.Milne

Date



Eve Hoch  
Guoying Zhang  
Balbir Dhillon  
Tai-Ming Alain Chow