

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

PANEL:

David Milne, Chairperson
Eve Hoch, Public Member
Sheela Moloo, Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	<u>Melisse Willems</u> for
)	College of Opticians of Ontario
- and -)	
)	<u>Peter Dlhopolec</u>
)	(self represented)
)	
PETER DLHOPOLEC, C-2109)	
)	
)	Heard: June 19, 2012
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on June 19, 2012 at the College of Opticians of Ontario (the “College”) at Toronto.

The Allegations

The allegations against Peter Dlhopolec (the “Member”) as stated in the Notice of Hearing, dated May 30, 2011 and marked as Exhibit 1 are as follows:

It is alleged that you committed acts of professional misconduct as defined in section 1, paragraphs 2, 26 and 28 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) Contravened section 4 (2) 2. of Ontario Regulation 869/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34;
- (c) Contravened section 4 (2) 3. of Ontario Regulation 869/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34; and
- (d) 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.

Further information with regard to the allegations were contained as Schedule "A" of the Notice of Hearing, which is reproduced below:

Schedule "A"

1. From April to December 2009, you dispensed eyeglasses for vision or eye problems at 193 College Street, Toronto to all or some 1,724 patients (the names of whom have been disclosed to you under separate cover) (the "Patients") that did not meet the standards of practice for opticians in the Province of Ontario, in that they were poorly fabricated and should not have been dispensed. In so doing, you contravened the Standards of Practice

for Opticians in the Province of Ontario adopted September, 2006, including Standard 3, item 2 thereof.

2. From April to December 2009, you dispensed eyeglasses for vision or eye problems at 193 College Street, Toronto to the Patients without using the appropriate tools for dispensing. In so doing, you contravened the Professional Standards of Practice for Opticians in the Province of Ontario adopted September 2006, including Standard 3, item 3 thereof.
3. From April to December 2009, you dispensed eyeglasses for vision or eye problems to the Patients without maintaining adequate or any patient files. In so doing, you contravened the Professional Standards of Practice for Opticians in the Province of Ontario adopted September 2006, including Standard 6 thereof.
4. From April to December 2009, you failed to display your certificate of registration at your principal practice location in violation of section 4(2) 2. of Ontario Regulation 869/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34. In so doing, you contravened section 1. 26. of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34.
5. From April to December 2009, you failed to wear a current photographic identification badge, supplied by the Registrar, prominently displayed, affixed with the current College renewal validation decal, at all times when engaged in the practice of opticianry, in violation of section 4(2) 3. of Ontario Regulation 869/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34. In so doing, you contravened section 1. 26. of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34.

6. From April to December 2009, you participated in a scheme whereby some or all of the Patients were deliberately, negligently or otherwise misled to believe that the eyeglasses dispensed by you were done so at no charge to them when, in fact, claims were made on their behalf to the benefit provider, thereby depleting their benefits without their knowledge or consent. In so doing, you 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.
7. From April to December 2009, you failed to report to the College of Optometrists that you had reason to believe that four (4) members of that College (the names of whom have been provided to you under separate cover) were engaging in behavior that was incompetent, professional misconduct, sub-standard and/or unethical in that the members were or appeared to be: participating in a scheme to deplete the Patient's health benefits without their knowledge or consent; misleading the Patients to believe that the eye examinations performed by the optometrists were free when they were not; and/or performing eye examinations on the Patients that fell below the standards expected of them. In so doing, you breached clause 5 of the Code of Ethics applicable to members of the College of Opticians of Ontario that states that opticians "Will report to the respective College, where they have reason to believe incompetence, misconduct, incapacity, sub-standard and/or unethical behaviour, or sexual abuse of a patient by another Member of any of the regulated health professions", thereby 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 of Opticians of Ontario as disgraceful, dishonourable or unprofessional.

8. From April to December 2009, you practiced opticianry at 193 College Street, Toronto, under conditions that adversely affected the quality of the treatment provided by you in that you practiced without the appropriate tools for dispensing and in an environment whereby the volume of patients was in excess of your ability to devote the time and attention required to provide adequate care. In so doing, you breached clause 13 of the Code of Ethics applicable to members of the College of Opticians of Ontario that states that opticians “Will not practice under conditions that may adversely affect the quality of their treatment”, thereby 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 of Opticians of Ontario as disgraceful, dishonourable or unprofessional.

Member’s Plea

Mr. Dlhopolec admitted the allegations set out at page 2 of the Notice of Hearing and as particularized in Schedule A. The panel received a written Plea (Exhibit #3) and written Plea Inquiry (Exhibit #4) which were 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

College counsel presented the panel with the parties’ Agreed Statement of Facts which was marked as Exhibit 5 and provided as follows:

- (a) At all material times, Mr. Dlhopolec was a member of the College of Opticians of Ontario, working as an optician on a freelance basis.
- (b) From April to December 2009, Mr. Dlhopolec dispensed eyeglasses to students of George Brown College at 193 College Street, Toronto. Over the course of this time, Mr. Dlhopolec worked on approximately 8-10 occasions.
- (c) In or about April of 2009, Mr. Dlhopolec received a telephone call from a man who introduced himself as "James". "James" was later identified as Mr. Kola J. Afolabi. Mr. Afolabi invited Mr. Dlhopolec to George Brown College for an interview to do some opticianry work.
- (d) When Mr. Dlhopolec went to George Brown for the interview, he was introduced to three optometrists who were going to be part of the team. Mr. Dlhopolec was told by Mr. Afolabi that the optometrists would perform eye exams on George Brown students and Mr. Dlhopolec would then dispense eyeglasses to the students based on the eye exams. Mr. Afolabi told Mr. Dlhopolec that this would start as soon as the working location was set up. There was no written contract between Mr. Afolabi and Mr. Dlhopolec setting out the terms of this arrangement; everything was agreed to orally.
- (e) In April 2009, Mr. Dlhopolec received a call from Mr. Afolabi telling him that the location where he would be working was at 193 College Street, Toronto.
- (f) Mr. Dlhopolec went to 193 College Street on April 21, 2009 for his first day of working for Mr. Afolabi. The building is not part of George Brown campus. The building had a printing company on the first floor and an optometrist's office on the second floor that appeared to have eye examination and dispensing equipment on site, including a lensometer. Mr. Dlhopolec was to be working on the third floor of the

building. When he arrived at the third floor, he noticed that the space was not an optical store. The room was almost empty except for two tables that were covered with piles of plastic bags. The plastic bags contained eyeglass frames and handwritten name tags. The handwriting on the name tags was hard to read. The frames did not yet have lenses in them. There was no dispensing equipment in the room although Mr. Dlhopolec had his own pupil distance ruler and screwdriver with him.

(g) Mr. Afolabi told Mr. Dlhopolec that the students had already chosen frames at the George Brown campus. Mr. Dlhopolec was not present when this occurred and the frames were chosen without the assistance of an optician, optometrist or ophthalmologist. Mr. Afolabi also told Mr. Dlhopolec that the students would come to the College Street location for eye exams and to have their pupil distances measured. The optometrists would perform the eye exams and Mr. Dlhopolec would take the pupil distance measurements. Once this was done, the frames would be sent with each student's prescription and measurements to a lab to have the eyeglasses made.

(h) Mr. Dlhopolec then asked Mr. Afolabi where the dispensing tools were for him to use. They had an argument and Mr. Dlhopolec told him that he did not want to be part of any illegal dispensing. He asked Mr. Afolabi who the place was registered under, was it the College of Opticians or the College of Optometrists. Mr. Afolabi did not provide a clear answer. He told Mr. Dlhopolec that it was under George Brown College and to be patient because he was still too busy with other things but Mr. Dlhopolec would get the tools he needed.

- (i) Mr. Dlhopolec then proceeded to work at the College Street location, taking the students' pupil distance measurements using his own PD ruler. After a couple of days, the first batch of eyeglasses arrived. Mr. Dlhopolec went back and forth from the second floor to check the eyeglasses on the lensometer that was in front of the optometrist's office. He adjusted the frames using his screwdriver and his bare hands. This reminded him of his first days of school in 1978 in the former Czechoslovakia.
- (j) Mr. Dlhopolec dispensed the eyeglasses to the students if the prescription was filled correctly even if he was not able to adequately adjust the frames.
- (k) Mr. Dlhopolec complained to Mr. Afolabi that he could not work under these conditions. The next day when he arrived at the College Street location Mr. Afolabi gave him a Black and Decker heatgun to use to adjust frames. The heatgun is designed to strip paint. Mr. Dlhopolec started to use this to perform adjustments until he received proper equipment. Mr. Afolabi continued to promise Mr. Dlhopolec that he would be getting the correct equipment but the equipment never came.
- (l) On one of the days that Mr. Dlhopolec was working, Mr. Afolabi brought him some benefit claim forms from Green Shield Canada and asked Mr. Dlhopolec to sign them. Mr. Dlhopolec asked Mr. Afolabi why he needed to sign them and he responded that this was to prove that the eyeglasses had been dispensed to the students listed on the forms by a licensed optician. Mr. Afolabi also said that it was being done like this because there were no official files for the dispensing, that everything was on line in a computer. Mr. Dlhopolec asked Mr. Afolabi if this would get him into trouble and Mr. Afolabi assured him it would not. Mr. Dlhopolec then signed the forms without reviewing them.

(m) On one occasion during this time Mr. Dlhopolec went to the College Street location to work but it was locked. He waited for an hour in front of the location and asked the owner of the building at the printing company if he knew why the place was closed. The owner did not know and Mr. Dlhopolec went home. Later that day, Mr. Dlhopolec received a phone call from Mr. Afolabi asking him where he was because students were waiting for him at George Brown College. Mr. Afolabi went immediately to pick-up Mr. Dlhopolec and drove him to the George Brown campus. This was a different location from where Mr. Dlhopolec had been dispensing for Mr. Afolabi. When they arrived at the College, Mr. Afolabi took Mr. Dlhopolec to a classroom where there was again a pile of approximately 50 pairs of eyeglasses in plastic bags waiting to be dispensed. There were about 20 students already waiting to receive their eyeglasses. The area was messy and chaotic. Students began helping Mr. Dlhopolec locate their eyeglasses in the pile as they were in a hurry to get to their classes. Because the students were in a hurry, Mr. Dlhopolec quickly checked the prescription and PD measurements on the eyeglasses using his own PD ruler. As with the College Street location, there was no dispensing equipment in the classroom. Mr. Dlhopolec was unable to adjust some of the frames despite using his best efforts to do so. He dispensed these eyeglasses to the students anyway.

(n) Mr. Dlhopolec became very frustrated with the situation and did not hide his frustration from the students. He referred to the job he was doing as a “joke” and the quality of the eyeglasses as “crap” and told the students that if they had a problem with the frame to see Mr. Afolabi and if they could not see well with the eyeglasses they should see the optometrists who performed their eye exams.

- (o) After Mr. Dlhopolec was done dispensing these eyeglasses, Mr. Afolabi brought him a box of Green Shield benefit claim forms for him to sign. Mr. Afolabi told Mr. Dlhopolec that these were forms for the eyeglasses that he had just dispensed to the students that day. Mr. Dlhopolec asked Mr. Afolabi where all of these eyeglass orders had come from and who was taking the measurements for the eyeglasses. Mr. Afolabi told him that the optometrists were now taking all of the measurements during the eye exams and Mr. Dlhopolec only had to check that the eyeglasses had been filled according to the prescription and measurements and, if so, to sign the Green Shield forms as the dispensing optician. Mr. Dlhopolec signed the benefit claims forms based on what Mr. Afolabi told him but did not review the forms himself or check the names of the students to confirm whether he had, in fact, dispensed eyeglasses to them.
- (p) Mr. Dlhopolec did not create any files for the students to whom he dispensed eye glasses. He did not speak to the students about their optical needs, what lenses or frames were appropriate, or obtain any kind of health or occupational information from the students. He did not contact the College at any point to ask questions or raise concerns about the activity of Mr. Afolabi or the circumstances under which he was dispensing to the George Brown students. Whenever Mr. Dlhopolec questioned Mr. Afolabi about the business, Mr. Afolabi would just smile and laugh it off.
- (q) Mr. Afolabi subsequently submitted all of the benefit claims to Green Shield that were signed for by Mr. Dlhopolec. Mr. Dlhopolec does not know if any of these claims were for eyeglasses that he did not dispense.

- (r) George Brown students who are enrolled in the benefit plan with Green Shield for eyewear are allowed a \$100 benefit every 24 months to assist with the purchase of corrective eyewear and/or contact lenses. They are also allowed \$65 every 24 months to assist with the cost of an eye examination.
- (s) From June 15, 2009 to December 15, 2009, a seven month period, Green Shield made payment on 1,520 claims for eye examinations for students under the George Brown benefit plan. Every claim was for \$65, the maximum benefit amount allowed per student. The total amount paid out was \$94,825. All claims named one optometrist, Dr. Y. Wang, as the service provider. Dr. Wang was one of the optometrists who were providing eye examinations to the George Brown students.
- (t) From June 15, 2009 to December 15, 2009, Green Shield made payment on 1,724 claims for dispensed pairs of eyeglasses. Every claim was for \$100, the maximum benefit amount payable per student. The total amount paid out was \$161,354.06. All claims listed "Exuberance Optical" as the service provider. Mr. Dlhopolec is a registered partner with Mr. Afolabi of "Exuberance Optical", although Mr. Dlhopolec was neither aware of nor did he consent to this. Although Mr. Dlhopolec was a registered partner of Exuberance Optical, he did not receive any of these funds beyond what he billed for the hours he worked.
- (u) Mr. Dlhopolec billed Exuberance Optical a total of \$1,719.80 inclusive of GST for the work he performed in dispensing to the George Brown students.
- (v) The volume of claims made by the George Brown students was very high compared to similar plan sponsor groups whose benefit plans are also administered by Green Shield.

- (w) The students were drawn to purchasing these eyeglasses because of signs that were posted at George Brown advertising free eye exams and glasses for full-time students and free eye exams only for part-time students. Mr. Dlhopolec saw the sign but it did not concern him because he believed that the Student Association of George Brown College was involved in the advertising of Exuberance Optical and that the Association had brought Mr. Afolabi into the College. He did not ask anyone about the sign or why he was being asked to sign benefit claims forms when the eyeglasses were being advertised as “free”.
- (x) Some if not all of the students were not aware that claims were being made on their behalf to Green Shield for the eye examinations and the eyeglasses and only learned of this after Green Shield started an internal investigation. The claims were made using their student numbers, which the students provided under the impression that they were being collected solely for the purpose of establishing their student status. The students did not realize that their student number was also their Green Shield Canada Plan Member identification which is needed to file a benefit claim. Some students were told that they eye exams and eyeglasses were free but were then asked if they had benefit coverage through George Brown College and to sign a Green Shield form. For all of the students, the claims depleted their full benefit amount for the allowable 24-month period.
- (y) Green Shield received complaints from some of the students about the quality of the eyeglasses that were dispensed to them. Some of the students received eyeglasses with the wrong prescription. One student received single vision eyeglasses although she required bifocals.

(z) While working for Mr. Afolabi, Mr. Dlhopolec did not display his certificate of registration at 193 College Street, Toronto, Ontario, being his principal practice location at the time nor did he wear his College-issued identification badge.

Decision

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member committed an act of professional misconduct as alleged in the Notice of Hearing.

Reasons for Decision

The panel concluded that the Member had committed the professional misconduct as charged based on the evidence provided by Counsel for the College. Further the panel found support for its conclusion based on the fact that the Member had not challenged any of the evidence put forth, and in submission only sought to explain the situation, in an attempt to mitigate any sanction which the panel wished to impose on the member.

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 and the Member agree to an order by the Discipline Committee as follows:
 - a) A reprimand before a panel of the Discipline Committee and the fact of the reprimand to be noted in the register of the College;

- b) A suspension for a period of four weeks; and
- c) Costs to the College in the amount of \$2500.

Penalty Decision

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

- a) A reprimand before a panel of the Discipline Committee and the fact of the reprimand to be noted in the register of the College;
- b) A suspension for a period of four weeks; and
- c) Costs to the College in the amount of \$2500.

Reasons for Penalty Decision

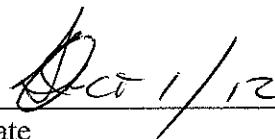
The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has clearly accepted responsibility for his actions.

The Panel was satisfied that the Member entered into this arrangement with the College on a voluntary and informed basis. He was agreeable to the proposed penalty.

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 Milne



Date

Eve Hoch
Sheela Moloo