

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

PANEL:

Hugh Corbett, Chairperson, Public Member
Mike Smart, Professional Member
Jeff Fernandes, Professional Member
Janice Schmidt, Professional Member
Omar Farouk, Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<i>Rebecca Durcan</i>
)	College of Opticians of Ontario
- and -)	
)	<i>Norman Wade Eggett</i>
)	Appearing in Person
NORMAN WADE EGGETT, C-1039)	
)	<i>Johanna Braden</i>
)	Independent Legal Counsel
)	
)	Heard: June 3, 2015

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of College of Opticians of Ontario (“the College”) June 3, 2015 at the offices of the College in Toronto.

The Notice of Hearing

The College commenced this proceeding by way of a Notice of Hearing dated December 11, 2014 (Exhibit #1). In the Notice of Hearing, the College alleged that Norman Wade Eggett (the “Member”) had worked as an optician at “Eyes on Richmond” in London, Ontario while his registration was suspended for a period of approximately four years, from March 2010 to April

2014. By practising while suspended, the College alleged that the Member had contravened the following five paragraphs of section 1 of Ontario Regulation 828/93 passed pursuant to the *Opticianry Act, 1991*, S.O. 1991 c. 34:

2. Contravening a standard of practice of the profession.
5. Permitting, counselling or assisting anyone who is not registered under the Act to perform an act which should be performed by a member.
17. Inappropriately using a term, title or designation in respect of the member's practice.
26. Contravening any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.
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.

Section 1 of Ontario Regulation 828/93 provides that the conduct described in each of the five foregoing paragraphs constitute acts of professional misconduct for which the Panel may make an order directing the Registrar of the College to, among other things, suspend the registration of the Member and impose a fine, reprimand or terms and conditions on the Member.

Member's Plea

The Member attended the hearing in person and was not represented by counsel. At the outset of the hearing, the Panel was advised that the Member was admitting to the allegations set out in the Notice of Hearing. The Panel was presented with an Agreed Statement of Facts, dated May 6, 2015, signed by the Member and counsel for the College (Exhibit #3), containing an agreement between the parties as to both the facts and the misconduct engaged in by the Member. Before proceeding to consider the Agreed Statement of Facts, the Panel received a written plea inquiry completed by the Member and also conducted an oral plea inquiry of the Member. The Panel was satisfied that the Member's admissions in the Agreed Statement of Facts were voluntary, informed and unequivocal and that he understood the consequences of the admissions he was making.

The Evidence

The misconduct portion of the hearing proceeded on the basis of the Agreed Statement of Facts (Exhibit #3) together with Exhibit #4, which is described in more detail below. Neither the College nor the Member called any witnesses. The Agreed Statement of Facts was similar in all material respects to the facts and misconduct alleged in the Notice of Hearing, with the exception that the parties had included some additional particulars and documents in the Agreed Statement of Facts relevant to the matters under consideration. The Agreed Statement of Facts was 17 paragraphs in length, all of which are reproduced below:

“The parties agree that the following facts¹ may be accepted as true:

The Member

1. Norman Wade Eggett (“Mr. Eggett”) has been a member of the College of Opticians of Ontario (“the College”) since approximately 1979.
2. Mr. Eggett does not have a previous discipline history with the College.

Suspension

3. Since July 31, 2003, Mr. Eggett has been administratively suspended from the College. As a result, Mr. Eggett has been prohibited from using the title “optician”, performing the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and holding himself out as a member of the College. Attached at Tab “A” are copies of the suspension letters sent by the College to Mr. Eggett.
4. Despite being suspended, Mr. Eggett continued to use the title “optician”, perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and hold himself out as a member of the College.

Working at Eyes on Richmond

¹ The documents referred to at Tabs A, B and C of the Agreed Statement of Facts have not been reproduced in this Decision and Reasons.

5. In or around March 2010, Mr. Eggett was hired by RM, another suspended member of the College, to work as an optician at Eyes on Richmond in London, Ontario. RM was the owner of Eyes on Richmond.
6. If Mr. Eggett were to testify he would state that when he closed Eggett Optical in March 2010, it was a very stressful time and he was struggling with family issues. When he was given the opportunity by RM to work at Eyes on Richmond he was very grateful and his concern was looking after his family.
7. Mr. Eggett was aware that RM was suspended from the College.
8. On March 11, 2014, the London Free Press published an article featuring Eyes on Richmond, RM and Mr. Eggett. Attached at Tab "B" is a copy of the London Free Press Article.
9. On April 9, 2014, the College spoke with RM over the phone and RM indicated that there are no registered Opticians in good standing associated with Eyes on Richmond. Attached at Tab "C" is a copy of the information form signed by RM on May 8, 2014, which indicates that there were no registered Opticians working at Eyes on Richmond.
10. While working at Eyes on Richmond, Mr. Eggett performed the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and held himself out as a member of the College. However, Mr. Eggett did not display his certificate of registration at Eyes on Richmond.
11. While working at Eyes on Richmond, Mr. Eggett permitted and assisted RM to perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses.
12. On April 9, 2014, RM confirmed with the College that there were no registered opticians in good standing working at Eyes on Richmond.
13. On or about May 8, 2014, Mr. Eggett ceased working at Eyes on Richmond.
14. On October 21, 2014, Mr. Eggett responded to the College's investigation and stated that he was aware of the fact that he was holding himself out as an optician while he was suspended.
15. If Mr. Eggett were to testify he would state that he regrets the situation.

16. Mr. Eggett has been complying and working with the College during the investigation process.

Acts of Professional Misconduct

17. As a result of the above, it is agreed that Mr. Eggett engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:

- a. He contravened a standard of practice of the profession (paragraph 2);
- b. He permitted, and assisted RM, who was not registered under the Act, to perform an act which should be performed by a member (paragraph 5);
- c. He inappropriately used a term, title or designation (paragraph 17);
- d. He contravened a provision of the Opticianry Act, 1991, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts (paragraph 26);
and
- e. 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).

(End.)

In addition to the Agreed Statement of Facts, the parties also submitted Exhibit #4, which consisted of two Continuing Education Attendance Certificates from the Academy of Ophthalmic Education signed by the Member. The parties relied on Exhibit #4 as evidence that the Member had inappropriately used a term, title or designation contrary to paragraph 17 of section 1 of Ontario Regulation 828/93. The parties informed the Panel that Exhibit #4 constituted the totality of the evidence with respect to this allegation.

Decision - Misconduct

After reviewing the facts and admissions set out in the Agreed Statement of Facts and hearing the submissions of the Member and of counsel for the College, the Panel was satisfied that the

evidence clearly established that the Member had engaged in the acts of professional misconduct described at paragraphs 17(a), (b), (d) and (e) of the Agreed Statement of Facts.

For the reasons set out below, the Panel declined to make a finding that the Member had engaged in the act of professional misconduct described at paragraph 17(c) of the Agreed Statement of Facts, which concerned the allegation that the Member had "inappropriately used a term, title or designation" by completing and signing two continuing education certificates (Exhibit #4) while he was suspended.

Reasons for Decision - Misconduct

The Panel was satisfied based on the facts and admissions contained in the Agreed Statement of Facts that the Member had practised while suspended at "Eyes on Richmond" in London, Ontario from in or around March 2010 to May 8, 2014, a period of just over four years. The evidence established that the Member had in fact been administratively suspended since July 31, 2003 for failing to pay his annual fees to the College— almost seven years before he started working at Eyes on Richmond. There was no evidence before the Panel to indicate how the Member had occupied his time between July 31, 2003 and March 2010 and, specifically, whether the Member may have also practised while suspended during this period. Since the Agreed Statement of Facts does not address the Member's status during this period, we have confined our decision on misconduct solely to the period from March 2010 to May 8, 2014, during which time the Member admits that he practised while suspended at Eyes on Richmond.

While he worked at Eyes on Richmond, the Member, by his own admission, continued to use the title "optician", performed the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and held himself out as a member of the College (see: paragraph 4 of the Agreed Statement of Facts).

The Panel notes that Member's decision to practice while suspended at Eyes on Richmond was clearly not the product of any mistake, inadvertence or misunderstanding on his part. The two letters from the College to the Member at Tab A of the Agreed Statement of Facts, combined with the Member's general knowledge and experience, leave no doubts in the Panel's mind that the Member was fully aware that he was practising while suspended during the material time.

Having regard to all of the foregoing, the Panel felt the evidence was clear and unequivocal that the Member had engaged in the misconduct admitted to in paragraphs 17(a), (b), (d) and (e) of the Agreed Statement of Facts.

The Panel was not satisfied however that the evidence before us established that the Member had inappropriately used a term, title or designation contrary to paragraph 17 of section 1 of Ontario Regulation 828/93. The College's case on this point rested entirely on the two documents that comprise Exhibit #4. Those documents are two Continuing Education Attendance Certificates, one dated October 21, 2007, the other dated October 19, 2014, in respect of continuing education seminars the Member attended in person while he was suspended. In both cases, the Member printed his name and registration number on the line indicated for "Optician's Name and Registration Number", and signed his name on the line indicated for "Optician's Signature". On each occasion he did so, the Member was in fact suspended. Counsel for the College informed the Panel that the Member's alleged contravention arises from the fact that on both occasions the Member implied he was an optician in good standing when he was in fact suspended.

Leaving aside the question whether it is in the public interest to discipline a suspended member for attending continuing education seminars, we are not satisfied that the evidence before us establishes a contravention. At the material times, there were only two classes of registration as an optician— "active" and "suspended". Both categories however correctly refer to the status of "an optician" and there was no evidence before us that the registration number of a suspended Member is varied, revoked or coded as suspended in any way (e.g. by the addition of an asterisk, letter or number). As for the forms themselves, they do not draw a distinction between active and suspended Members, nor do they invite the optician completing them to make that distinction. If the College has provided guidance to its Members on the status of suspended Members and how they should identify themselves in these situations, it was not before us. Having regard to all of the circumstances, the Member completed both forms accurately and, we note, was fully transparent in doing so. There was no evidence before us that he intended to mislead anyone about his status by completing the forms as he did.

In any event, we are not satisfied on the evidence before us that the Member's completion of the forms constituted a "holding out" of the type the Regulation is intended to protect the public against. The Regulation protects members of the public from false or misleading assertions by opticians as to their status or qualifications. Presumably, the College was not misled in any way by these forms since it controls the registration process. Nor do we believe the Academy of Ophthalmic Education, the sponsor of the seminars, had an interest in whether the Member was suspended or active. Lastly, there was no evidence that any member of the public was aware of the forms, let alone adversely affected by how the Member completed them.

While we are not prepared to find on the evidence before us that this violation was established, our reasons should not be construed as foreclosing this type of violation from ever being established. On different facts and in different circumstances, the completion of forms by a suspended optician may constitute a "holding out" that amounts to professional misconduct.

Penalty Evidence

On consent of the parties, additional evidence was put before the Panel with respect to penalty.

First, the College submitted an Undertaking and Acknowledgement signed by the Member on April 27, 2015 (Exhibit #6). By way of this document, the Member undertook that during any period of suspension, he would not do any of the following: use the title "optician"; perform the controlled act of dispensing; permit, counsel or assist unauthorized persons to dispense eyeglasses; or hold himself out as a member of the College.

Second, the Member submitted a letter that he had written to counsel for the College, dated April 27, 2015 (Exhibit #7). This letter summarized his reasons for choosing to practice while suspended and conveyed his apologies and remorse for doing so.

Penalty Submissions

The parties presented the Panel with a Joint Submission on Penalty (Exhibit #5) in which the parties jointly requested that the Panel make the following order:

1. The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
2. The Registrar is directed to suspend the Member's certificate of registration for five (5) months, to commence on a date to be set by the Registrar;
3. The Registrar will suspend one (1) month of the suspension in paragraph 2 above if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 4 below within 3 (three) months of the date of the order. In any event, the Member must complete the requirements set out in paragraph 4 below within 1 (one) year of the date of the Order;
4. The Registrar is directed to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in ethics, the cost of which will be borne by the Member; and
5. The Member is ordered to pay the College costs in the amount of \$1,000.00 within 30 days of the date of the order.

Decision - Penalty

The Panel accepted the parties' joint submission and ordered that:

1. The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
2. The Registrar is directed to suspend the Member's certificate of registration for five (5) months, to commence on a date to be set by the Registrar;
3. The Registrar will suspend one (1) month of the suspension ordered in paragraph 2 above if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 4 of this order within 3 (three) months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 4 of this order within 1 (one) year of the date of this Order;
4. The Registrar is directed to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to successfully complete, in

the opinion of the Registrar, a course, approved by the Registrar, in ethics, the cost of which will be borne by the Member; and

5. The Member is ordered to pay the College costs in the amount of \$1,000.00 within 30 days of the date of this order.

Reasons for Decision - Penalty

Although the Panel unanimously agreed to approve the penalty proposed by counsel for the College and the Member, we did so only after considerable deliberation and not without some degree of reservation. The Panel was concerned that the proposed penalty was at the light end of the spectrum and as such, may not serve as an adequate specific or general deterrent, and may undermine public confidence in the College's registration and enforcement processes.

The Panel views practicing while suspended as a serious contravention that goes to the heart of the College's mandate to regulate opticians in the public interest. The registration process is an essential component of the regulatory framework for achieving patient care by ensuring that only those who meet the standards of proficiency and good character required of an optician are permitted to practice and deal with members of the public. Members of the public are entitled to expect that only opticians who have maintained their registration in good standing will be permitted to deal with patients. Patients who unknowingly deal with suspended members are not only placed at potential risk of harm, but may also subsequently find out that they are unable to collect eye-care benefits to which they're entitled under their health insurance programs.

The registration process also forms an important component of the College's continuous oversight of its members. Through the annual attestation that each member is required to complete as part of the registration process, the College may be made aware of important developments, such as a serious criminal charge, which may be relevant to the decision whether the Member should be permitted to continue in practice or have terms and conditions placed on their registration.

It is also almost entirely through the annual fees paid by members when renewing their registrations that the College generates the necessary revenue to regulate the practice of opticianry in the public interest.

Lastly, it is worth noting that those members who faithfully comply with the registration requirements year in and year out may be adversely affected by those members who choose to practice while suspended. As noted in the commentary to the *Mount* decision discussed below, engaging in unlicensed practice diminishes the integrity of the profession as a whole in the minds of the public, other health professionals and insurance providers.

In determining whether a proposed penalty is appropriate, a Panel should consider, among other things, whether the penalty is reasonable and proportionate having regard to the nature of the misconduct, the circumstances in which the misconduct occurred, and the personal circumstances of the Member.

While the proposed amount of costs that the Member will pay as a result of this proceeding – \$1,000 – is not inconsistent with costs awards in other discipline cases, we note that this amount falls well short of the total amount of fees that the Member avoided paying to the College by not renewing his registration. The terms of the proposed penalty also do not require the Member to pay these "back fees" before returning to practice.

Counsel for the College submitted a Penalty Brief which contained four cases for our consideration. Three of those cases were previous decisions of this College, the other one was a decision of the College of Massage Therapists, which is also regulated under the *Regulated Health Professions Act*. While all of the cases are instructive, none of them approach the level of the situation before us, where the Member practised while suspended with impunity for a period of four years. We briefly review each case below in turn.

In *College of Opticians of Ontario v. O'Reilly* (Discipline Committee, 2013) the member (who was himself an optician in good standing at the time) allowed a registered student optician to dispense eyeglasses to an undercover investigator retained by the College while the student

worked alone at the Member's store, unsupervised. The College imposed a reprimand, a suspension with an effective length of 6 weeks², a course requirement and costs of \$2,000.

In *College of Opticians of Ontario v. Diestler* (Discipline Committee, 2013), the member (who was himself an optician in good standing at the time) allowed a non-registered individual to perform the acts of prescribing and dispensing to two different patients by meeting with the patients on several occasions over the course of roughly one year. In addition, the Member performed a refractometry and prepared a prescription for another patient when not licensed to do so. Lastly, the Member failed to maintain patient files for numerous patients correctly and provided false and misleading information to the College during the course of its investigation. The College imposed a reprimand, a suspension of 10 weeks, a self-evaluation exercise and costs of \$2,500.

In *College of Opticians of Ontario v. Ciotka* (Discipline Committee, 2009), the member was a student optician who, while her registration as a student optician was suspended, dispensed eyeglasses to a single patient. The College imposed a reprimand, a two week suspension, and costs of \$2,000.

In *College of Massage Therapists of Ontario v. Mount* (Discipline Committee, 2009), a registered massage therapist carried on practising while suspended for approximately six months, during which time she provided 257 massage treatments and earned approximately \$20,000. The College of Massage Therapists imposed a reprimand, a suspension with an effective length of three months, a course requirement and costs of \$1,000.

As these cases demonstrate, situations where a licensed health care provider has practiced while suspended for a prolonged period of time appear to be few or non-existent. Most of the cases appear to involve short-lived or isolated occurrences, or involve individuals in good standing acting outside of their authority. Of the cases put before us, the longest that an individual had practised while suspended was the massage therapist in the *Mount* case, who went six months. The Panel took some comfort in knowing that, based on the cases before us, a four month

² The effective length of the suspension is defined here to mean the length of the suspension after it is reduced by any credits the Member is entitled to receive for taking other steps, such as satisfying a course requirement.

suspension would be at the very high end of the spectrum and, by that measure, is not unreasonable.

While the Panel is prepared to approve the proposed penalty in this case, we recommend that in future cases of this type (practising while suspended) the suspension imposed on a member should be, absent extenuating circumstances, and keeping in mind the purposes of penalty orders and the overall statutory scheme governing the College, at least equal in length to the period of time that the Member practiced while suspended. Requiring members to "give back" every day that they gained by practising while suspended will foster a sense of fairness and confidence in the regulatory process. (By way of contrast, in the case before us, the effective duration of the proposed suspension – four months³ – amounts to a penalty of only one month of suspension for each year that the Member was found to have practiced while suspended.)

By applying a "one for one" model of this nature to future cases, members should be incentivized to refrain from practising while suspended in the first place, and to quickly self-report if they do to reduce their potential suspension as much as possible.

Along the same lines, we recommend that in future cases of this type, a member should not be reinstated until he has paid, or has entered into arrangements to pay, all arrears of fees owing to the College that he avoided paying by virtue of the fact that he chose to practice while suspended rather than renewing his registration. A member who practices while suspended should not be in a better position financially than his fellow members who paid the fees required to maintain their registration in good standing over the same period.

While we have the concerns expressed above about the proposed suspension and amount of costs to be paid by the Member, our decision to approve the proposed penalty was ultimately swayed by three considerations. First, this is an exceptional case – we were not presented with any other cases where an individual managed to practise while suspended for four years, whether in the field of opticianry or in a different profession. A four month suspension, while perhaps light when judged against a period of four years, is still significantly higher than the suspensions

³ The penalty calls for a suspension of five months, which is to be reduced to four months if the Member completes an ethics course.

typically imposed by the College in more usual practising-while-suspended cases. Second, we understand that as a Panel we should refrain from interfering with a negotiated resolution entered into between counsel for the College and a member unless the outcome would bring the administration of justice into disrepute. Only the parties know the full range of facts, issues and circumstances which informed their decision making. It is not our role to second guess the agreement reached by the parties but to satisfy ourselves that it falls within a reasonable range of acceptable outcomes. Third, in approving the proposed terms of settlement, we took into consideration the unique personal and financial circumstances facing the Member, which we understand contributed to his ill-considered decision to practice while suspended.

In regard to the latter, counsel for the College informed us that the Member cooperated with both the investigation and prosecution of this proceeding, and assured us that the Member was very remorseful for his conduct. In a letter to counsel for the College dated April 27, 2015 (Exhibit #7), the Member described in some detail the exceptional personal, financial and family misfortunes he has sustained which we understand contributed to his poor decision making during the material time. The Member attended the hearing in person, which provided an opportunity for the Panel to meet him in person and assess his degree of remorse and contrition. While the Member did not speak at length on his own behalf and was understandably somewhat nervous and restrained, we were satisfied that he understood the significance of the proceedings and was truly remorseful.

The Panel also notes the following factors that mitigate in favour of a more lenient penalty: the Member has no prior disciplinary history; there were no patient complaints concerning the Member; there have been no allegations of patient harm attributable to the Member; and the Member, by entering into the Agreed Statement of Facts and making a joint submission on penalty, has saved the College the time, effort and resources that would otherwise have been expended conducting a full hearing.

In conclusion, having regard to all of the facts and circumstances, the Panel is satisfied that the proposed penalty is reasonable and appropriate.

I, **Hugh Corbett**, 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:



November 6, 2015

Hugh Corbett, Chairperson

Date

Mike Smart, Professional Member
Jeff Fernandes, Professional Member
Janice Schmidt, Professional Member
Omar Farouk, Public Member