

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

PANEL:

Roque Fernandes – Chairperson
Balbir Dhillon – Elected Member
Gloria Baltazar – Public Member
David Milne - Public Member
Guoying Zhang - Appointed Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	REBECCA ZARETSKY for
)	College of Opticians of Ontario
- and -)	
)	JASPAL MAMAK
)	
)	LUISA RITACCA
JASPAL MAMAK C-1900)	Independent Legal Counsel
)	
)	Heard: April 18, 2013
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 18, 2013 at the College of Opticians of Ontario (“the College”) at Toronto.

Counsel for the College provided the panel with evidence that the Member had been sent the Notice of Hearing. The panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member’s absence.

The Allegations

The allegations against Jaspal Mamak (the "Member") as stated in the Notice of Hearing dated November 30, 2009 (Exhibit #1) are as follows:

IT IS ALLEGED that you have committed acts of professional misconduct as defined in section 1, paragraphs 2, 16, 21, 23, 24, 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 a standard of practice of the profession;
- (b) failed to reply without sufficient reason to registered letters from the College of Opticians of Ontario
- (c) falsified a letter relating to your practice
- (d) signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement;
- (e) submitted an account or charge for services that you knew or ought to have known was false or misleading
- (f) contravened the Regulated Health Professions Act, 1991 by engaging in the controlled act of dispensing eyeglasses for vision or eye problems without being a member authorized by a health profession Act to perform the controlled act; and
- (g) 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.

SCHEDULE "A"

1. During the period between on or about February 2005 and on or about November 2006, you submitted, directed or caused persons to submit insurance claims to Green Shield Canada that you knew or ought to have known were false or misleading. Without limiting the generality of the foregoing, you:
 - a) submitted, directed or caused persons to submit 18 (eighteen) insurance claims to Green Shield Canada with respect to 11 (eleven) patients, whose identities have been disclosed to you under a separate cover, for products that these patients did not receive;
 - b) submitted, directed or caused persons to submit 6 (six) insurance claims to Green Shield Canada with respect to 6 (six) patients whose identities have been disclosed to you under a separate cover, for eyeglasses that purported to be prescription eyeglasses when you in fact provided these patients with non-prescription eyeglasses; and
 - c) submitted, directed or caused persons to submit 21 (twenty one) claims to Green Shield Canada with respect to 15 (fifteen) patients, whose identities have been disclosed to you under a separate cover, for eyeglasses that purported to be prescribed by an optometrist or a medical doctor when in fact they were not.

2. During the period between on or about May 2007 and on or about April 2008, you dispensed subnormal vision devices, contact lenses or eyeglasses other than simple magnifiers for vision or eye problems to 59 (fifty-nine) patients, whose identities have been disclosed to you under a separate cover, at Jazzy Specs Optical Boutique, 2760

Howard Avenue, Unit #4 and 2849 Howard Avenue, Windsor, Ontario. At that time, your certificate of registration as a registered optician with the College of Opticians of Ontario (the "College") was under suspension. Accordingly, you were not a member authorized by a health profession Act to perform the controlled act of dispensing.

3. On or about July 15 and 24, 2008, you dispensed eyeglasses for vision or eye problems to Mr. Dean Benard at Design Optical, 80 King Street South, Waterloo, Ontario. At that time, your certificate of registration as a registered optician with the College was under suspension. Accordingly, you were not a member authorized by a health profession Act to perform the controlled act of dispensing.
4. You failed to reply without sufficient reason to registered letters from the College dated June 21, 2008, July 28, 2008 and September 12, 2008 and failed to provide the College with a copy of the information it demanded from you in those registered letters.
5. You failed to keep proper patient health records for 33 (thirty-three) patients, whose identities have been disclosed to you under a separate cover, in contravention of the Professional Standards of Practice for Opticians in the Province of Ontario.

Member's Plea

The Member admitted the allegations set out in paragraphs numbered a) to g) in the Notice of Hearing, as particularized in Schedule A. The panel received a written plea inquiry which was signed by the Member and which the panel marked as Exhibit #2. The panel 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 which provided as follows:

1. At all material times until April 23, 2007, Jaspal Mamak was a member of the College of Opticians of Ontario (the "College"). Mr. Mamak's certificate of registration with the College was suspended on April 23, 2007 for not paying the fee to renew his registration for 2007. Mr. Mamak has not reinstated his certificate of registration since that time and remains under suspension.
2. Between February 2005 and November 2006, Mr. Mamak was the owner and operator of and dispensing optician for Jazzy Specs Optical Boutique, located at 2760 Howard Avenue, Unit #4 and 2849 Howard Avenue, Windsor, Ontario ("Jazzy Specs"). During this time, Mr. Mamak prepared and submitted benefit claims to Green Shield Canada ("Green Shield") as follows:
 - a. Eighteen (18) benefit claims were submitted to Green Shield with respect to eleven (11) persons for prescription eyewear that these persons did not receive. The patient names are set out in Schedule "A". For each of these persons, Mr. Mamak prepared a benefit claims form assigning benefits payable from the claim to him and authorizing payment directly to him. Mr. Mamak signed each form with the names of the respective plan members. He did so without the knowledge or consent of the person and knowing that the eyewear had not been dispensed to them. The forms requested reimbursement from Green Shield Canada under the persons' benefit plans and retained the funds. In one case, Mr. Mamak submitted a claims form for reimbursement for eyeglasses for a child

who did not and had never worn prescription eyewear nor had the child ever even been a patient of Mr. Mamak's or been to Mr. Mamak's store. When Green Shield contacted Mr. Mamak about these claims and asked for supporting documentation, Mr. Mamak fabricated work orders and signed claims forms and provided these documents to Green Shield. The total amount paid directly to Mr. Mamak for these claims was \$4,375.00. Mr. Mamak has repaid approximately \$1,700.00 to Green Shield;

- b. Six (6) benefit claims were submitted to Green Shield Canada with respect to six (6) patients for eyeglasses that purported to be for prescription eyeglasses when, in fact, the patients were provided with non-prescription sunglasses. These patients are listed in Schedule "B". The claims were made so that the patients could purchase eyewear that was not covered by their benefit plans but still be reimbursed under those plans; and
 - c. Twenty one (21) benefit claims were submitted to Green Shield Canada with respect to fifteen (15) patients for eyeglasses that purported to be prescribed by an optometrist or a medical doctor when in fact they were not. These patients are listed in Schedule "C".
3. Mr. Mamak knew that the benefit claims submitted to Green Shield Canada were false or misleading.
 4. Also, during this time, while working as an optician at Jazzy Specs, Mr. Mamak did not keep complete patient health records for thirty-three (33) of his patients as set out in Schedule "D". For each of these patients, the patient record consisted entirely of a work

order form and a signed benefits claim form. There were no other documents or information contained in the patient records for these patients.

5. Between May 2007 and April 2008, Mr. Mamak was still working at Jazzy Specs.
6. During this time, Mr. Mamak dispensed prescription eyewear to fifty-nine (59) patients at Jazzy Specs while his certificate of registration with the College was suspended. The names of these patients are set out in Schedule "E". Mr. Mamak prepared and submitted benefit claims to Green Shield for these 59 patients purporting to be the dispensing optician in each case.
7. On July 15 and 24, 2008, Mr. Mamak was working at Designers Optical located at 80 King Street South, Waterloo, Ontario.
8. In June 2008, the College appointed Dean Benard, an investigator, to conduct an undercover shopping at Designers Optical as part of an investigation by the College to determine whether Mr. Mamak was dispensing while under suspension. On July 15 and 24, 2008, during the course of Mr. Benard's investigation, Mr. Mamak dispensed prescription eyeglasses to him.
9. The College sent registered letters to Mr. Mamak dated June 21, 2008, July 28, 2008 and September 12, 2008 about Green Shield's complaint.
10. The letter from the College to Mr. Mamak dated June 21, 2008 provided notice to Mr. Mamak of the complaint that had been made by Green Shield against him and sought a written response from Mr. Mamak. This letter was personally served on Mr. Mamak by Mr. Benard, the investigator, on July 24, 2008. The letter requested copies of all relevant documents regarding the 33 patients for whom it was alleged Mr. Mamak had not kept complete patient records. These are the patients listed in Schedule "D".

11. The letter from the College to Mr. Mamak dated July 28, 2008 requested additional information from Mr. Mamak relating to Green Shields's complaint in the form of all relevant documents relating to 69 patients for whom Green Shield alleged Mr. Mamak dispensed to while his certificate of registration was suspended. Fifty-nine of these patients are the patients listed in Schedule "E". The letter was successfully delivered to Designer's Optical, Mr. Mamak's then-current place of work.
12. The letter from the College to Mr. Mamak dated September 12, 2008 followed-up on the June 21, 2008 letter from the College, requesting Mr. Mamak to provide a written response to the complaint raised by Green Shield Canada. The letter also dealt with an unrelated matter. This letter was successfully delivered to Mr. Mamak's then-current home address.
13. Mr. Mamak did not reply to the registered letters sent to him by the College.
14. Mr. Mamak did not provide the information or documents requested in the letters sent by the College.
15. Mr. Mamak did not provide any reason for not replying to the registered letters sent by the College.
16. Mr. Mamak did not provide any reason for not providing the information requested by the College in the registered letters.

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 paragraphs a) to g) of the Notice of Hearing in that he:

- (a) contravened a standard of practice of the profession;

- (b) failed to reply without sufficient reason to registered letters from the College of Opticians of Ontario
- (c) falsified a letter relating to your practice
- (d) signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement;
- (e) submitted an account or charge for services that you knew or ought to have known was false or misleading
- (f) contravened the Regulated Health Professions Act, 1991 by engaging in the controlled act of dispensing eyeglasses for vision or eye problems without being a member authorized by a health profession Act to perform the controlled act; and
- (g) 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 was satisfied that the facts as admitted clearly constituted professional misconduct. Mr. Mamak acknowledged that he dispensed eyewear while under suspension, that he failed to respond to the College's correspondence and request for information in a timely fashion, and that he falsified documentation provided to his clients.

The panel concluded that this behaviour is clearly prohibited by the Regulations and would clearly be regarded by members of this profession as disgraceful, dishonourable and

unprofessional. Deceit, in the form of falsifying documents, and failure to respond to the College are forms of misconduct that are particularly disgraceful and unprofessional.

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) The Member's certificate of registration is revoked, effective immediately; and
 - b) The Member shall pay costs to the College in the amount of \$2,000.00 in four equal installments of \$500.00. The first payment will be provided on the date of this order and the three remaining installments will be paid on the first day of the following 3 months.

Penalty Decision

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

1. The Registrar is directed to revoke Mr. Mamak's certificate of registration effective immediately; and
2. Mr. Mamak is required to pay the College a portion of its costs in this matter in the amount of \$2000, in four equal installments of \$500. The first installment is to be paid on the date of this order and the three remaining installments will be paid on the first day of the following three months.

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, Roque Fernandes, 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



Date

- Balbir Dhillon
- Gloria Baltazar
- David Milne
- Guoying Zhang