

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

PANEL:

Eve Hoch – Chairperson – Public Member
Fazal Khan – Appointed Member
Paul Imola – Appointed Member
Gloria Baltazar – Public Member
Sheela Moloo – Elected Member

BETWEEN:

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COLLEGE OF OPTICIANS OF ONTARIO)	REBECCA ZARETSY for College of Opticians of Ontario
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- and -)	
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)	
REGAN MITCHELL C-262)	REGAN MITCHELL , in person
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)	
)	LUISA RITACCA Independent Legal Counsel
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)	Heard: April 24 th , 2013
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DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 24th, 2013 at the College of Opticians of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Regan Mitchell (the "Member") as stated in the Notice of Hearing dated August 3, 2011 (Exhibit #1), as amended, are as follows:

IT IS ALLEGED that you have committed acts of professional misconduct as defined in section 5 (2) of the *Opticianry Act*, S.O. 1991, c. 34, and in section 1, paragraphs 2, 5, 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) Dispensed eyeglasses without a prescription from an optometrist or a physician;
- (b) Contravened standards of practice of the profession;
- (c) 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; 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.

SCHEDULE "A"

1. In or about March 2010, you contravened a standard of practice of the profession by failing to maintain patient records in accordance with the Professional Standards of Practice for Opticians in the Province of Ontario, Standard 6: Records, when you abandoned your patient records at the dispensary operating as Vanier Optical located at 199 Railway Street, Cochrane, Ontario.

2. From October or November 2009 to March 2010, you permitted, counselled or assisted Angel Trepanier to perform acts of dispensing, being acts that should only be performed by a member of the College of Opticians of Ontario, the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario, while Ms. Trepanier was not a member of any of these Colleges.
3. From August 2008 to January 2009, you dispensed eyeglasses for vision or eye problems to three patients, JL, PB and JF, on the basis of your own refraction without a valid prescription from an optometrist or a physician. In so doing, you contravened the Opticianry Act, 1991 section 5(2) and the College of Opticians of Ontario Standard of Practice: Refraction including clause 6 and clause 7 thereof.
4. From October 2008 to November 2009, you permitted, assisted or directed a scheme whereby some of your patients received eye examinations from Rex Leyte, a person who is not a member of the College of Optometrists of Ontario or the College of Physicians of Ontario, and were then deliberately, negligently or otherwise misled to believe that the eye examinations were being performed by a person who was authorized to perform them. 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.
5. From January 2009 to March 2010, you practiced opticianry under conditions that adversely affected the quality of the treatment provided by you in that you dispensed based on eye examinations and/or pupil distance measurements done by unauthorized

individuals. 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

The Member admitted the allegations set out in paragraphs (a), (b), (c) and (d) in the Notice of Hearing, as particularized in Schedule A, as amended. 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 which provided as follows:

The Member

1. At all material times, Regan Charles Mitchell ("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 was granted refraction status by the College on June 10, 2008.
4. The Member is a Health Information Custodian as per the *Personal Health Information Privacy Act*, 2004, S.O. 2004 Chapter 3, Schedule A, section 13(1).

5. At all material times, the Member was the owner and operator of five Vanier Optical stores, with locations across Ontario including one located at 199 Railway Street, in Cochrane, Ontario (“Vanier Optical”). The other stores were located in Nakina, Manitouwadge, Petawawa and Ottawa.

Dispensing by Member Without A Valid Prescription

Patient JF

6. On or about January 8, 2009 the Member performed refractometry on JF, a patient, and dispensed eyeglasses for vision or eye problems based on the results of his own refraction without a valid prescription from an optometrist or a physician, in contravention of the College’s *Standard of Practice: Refraction* including clause 6 and clause 7 thereof and in contravention of section 5(1) of the *Opticianry Act* (“the Act”).
7. After performing a refraction on JF, the Member dispensed eyeglasses to JF based on the results of a refraction performed by him without a prescription from an optometrist or physician, in contravention of subsection 27(1) of the *Regulated Health Professions Act*, S.O. 1991, c. 18 (“the RHPA”).
8. The Member never informed JF that he was not permitted to dispense eyeglasses on the basis of his own refraction in absence of a valid prescription and that JF should obtain a prescription from an optometrist or physician.
9. The Member misled JF into believing that he was authorized to dispense eyeglasses based on his own refraction in absence of a valid prescription by so dispensing and failing to inform JF otherwise.

Patient PB

10. On or about August 8, 2008 the Member performed refractometry on PB, a patient, and dispensed eyeglasses for vision or eye problems based on the results of his own refraction without a valid prescription from an optometrist or a physician, in contravention of the College's *Standard of Practice: Refraction* including clause 6 and clause 7 thereof and in contravention of section 5(1) of the Act.
11. After performing a refraction on PB, the Member dispensed eyeglasses to PB based on the results of a refraction performed by him without a prescription from an optometrist or physician, in contravention of subsection 27(1) of the RHPA.
12. The Member never informed PB that he was not permitted to dispense eyeglasses on the basis of his own refraction in absence of a valid prescription and that PB should obtain a prescription from an optometrist or physician.
13. The Member misled PB into believing that he was authorized to dispense eyeglasses based on his own refraction in absence of a valid prescription by so dispensing and failing to inform PB otherwise.

Patient JL

14. On or about August 20, 2008 the Member performed refractometry on JL, a patient, and dispensed eyeglasses for vision or eye problems based on the results of his own refraction without a valid prescription from an optometrist or a physician, in contravention of the College's *Standard of Practice: Refraction* including clause 6 and clause 7 thereof and in contravention of section 5(1) of the Act.

15. After performing a refraction on JL, the Member dispensed eyeglasses to JL based on the results of a refraction performed by him without a prescription from an optometrist or physician, in contravention of subsection 27(1) of the RHPA.
16. The Member never informed JL that he was not permitted to dispense eyeglasses on the basis of his own refraction in absence of a valid prescription and that JL should obtain a prescription from an optometrist or physician.
17. The Member misled JL into believing that he was authorized to dispense eyeglasses on the basis of his own refraction in absence of a valid prescription by so dispensing and failing to inform JL otherwise.

Illegal Dispensing by Employee

18. At all material times, Angel Trepanier (“Ms. Trepanier”) was an employee at Vanier Optical located at 199 Railway Street, in Cochrane, Ontario, and the Member was her employer.
19. Ms. Trepanier 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.
20. From on or about October or November 2009 to on or about March 2010, Ms. Trepanier admitted that while working at Vanier Optical, she performed acts of dispensing, an act which should only be performed by a licensed individual.
21. The Member knew or should have known that Ms. Trepanier was dispensing from on or about October or November 2009 to on or about March 2010 without being authorized to do so.

22. The Member permitted, counseled and/or assisted Ms. Trepanier to prescribe and dispense from on or about October or November 2009 to on or about March 2010 without being authorized to do so.

Disgraceful, Dishonourable or Unprofessional Conduct

23. At all material times, Mr. Rex Leyte ("Mr. Leyte") was an employee at Vanier Optical located at 199 Railway Street, in Cochrane, Ontario and the Member was his employer.
24. Mr. Leyte 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.
25. From on or about October 2008 to November 2009, Mr. Leyte, while working at Vanier Optical, performed eye examinations on the following eleven (11) patients: JB, RL, MG, AE, RD, DA, LA, CB, SL, JS, RF, an act which should only be performed by a licensed individual.
26. The Member knew or ought to have known that Mr. Leyte was performing eye examinations from on or about October 2008 to November 2009 without being authorized to do so.
27. In allowing Mr. Leyte to perform eye examinations on patients, the Member caused the patients either deliberately, negligently or otherwise to be misled into believing that the eye examinations were being performed by a person who was authorized to perform them. In so doing, the Member engaged in conduct or performed an act, in the course of practising 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.

28. From on or about August 2008 to on or about November 2009, 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, the Member 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”, thereby engaging in conduct or performing an act, in the course of practising opticianry that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonorable or unprofessional.

Client Files

29. In or about March 2010, the Member closed all five Vanier Optical stores.
30. In or about March 2010, when the Member closed the Vanier Optical store located at 199 Railway Street, in Cochrane, Ontario, he abandoned his patient files by leaving them at the store.
31. The Member did not collect, retain or responsibly dispose of his patient files located at the Vanier Optical store at 199 Railway Street, in Cochrane, Ontario, as he was required to do pursuant to the *Professional Standards of Practice for Opticians in the Province of Ontario, Standard 6: Records* which requires both that:
- Patient files must be maintained in the dispensary for a minimum of six years from the date of the last entry; and that
 - An optician must meet the requirements of all applicable privacy legislation

The applicable privacy legislation, the *Personal Health Information Privacy Act, 2004*, S.O. 2004 Chapter 3, Schedule A, at section 13(1) reads:

A health information custodian shall ensure that the records of personal health information that it has in its custody or under its control are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 13 (1).

32. The parties agree that the conduct described above constitutes professional misconduct on the part of the Member as defined in section 5(2) of the *Opticianry Act*, S.O. 1991, c. 34, and in section 1: paragraph 2 (contravening a standard of the profession), paragraph 5 (permitting, counseling or assisting 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), 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 Agreed Statement of Facts, and the Member's plea, 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 (d) of the Notice of Hearing, and as particularized at Schedule "A", as amended, in that he:

- (a) Dispensed eyeglasses without a prescription from an optometrist or a physician;
- (b) Contravened standards of practice of the profession;
- (c) 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; 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.

Reasons for Decision

The panel deliberated and accepted the Member's admission to the allegations in the Notice of Hearing. In particular, the panel finds that the Member was in contravention of subsection 27 (1) of the *Regulated Health Professions Act*, S.O. 1991, c. 18 (the "RHPA"). The Member dispensed eyeglasses based on the results of a refraction performed by him without a prescription from an optometrist or physician. The Member misled a member of the public into believing he was authorized to dispense eyeglasses based on his own refraction. Further, the panel concluded that the Member satisfied the criteria of "breach of standard of refraction", abandonment of patient files and practiced outside "the scope of practice" with regard to refraction.

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 Regan Charles Mitchell ("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 eight (8) weeks, to commence on a date to be set by the Registrar.
- c) The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration for a period of two (2) years that:
 - i. the College may, without notice, conduct random inspections of the Member's practice and examine his records as the College may require;
 - ii. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of four (4) over the two-year period;
 - iii. The Member shall pay to the College, within 15 days of each inspection, costs in respect of each inspection to a maximum of \$500 per inspection;
 - iv. The Member shall cooperate with the inspections; and
 - v. If the Member is an employer, will instruct his employees to cooperate with the inspections.
- d) The Member will sign an undertaking that he:
 - i. Will only permit an optician (including himself) to perform refractions if that optician has valid and current refraction status from the College;
 - ii. Will not permit, counsel or assist unauthorized persons to prescribe or to dispense eyeglasses;
 - iii. Will not dispense without a prescription from an optometrist or physician;

- iv. Will comply with the College's Standard on Records.
- e) The Member is required to pay the College a portion of its costs in this matter in the amount of \$1000 within 30 days of the date of this order.

Penalty Submissions

Counsel for the College submitted that in assessing the appropriateness of the joint submission as to penalty, the panel should give weight to the fact that the proposal adequately protects the public; acts as specific deterrent with regard to Mr. Mitchell and as a general deterrent to the membership at large; and that the proposed penalty includes a rehabilitative feature, in that Mr. Mitchell will be subject to inspections over the next 2-year period. In addition, the College advised the panel that Mr. Mitchell had already entered into the undertaking proposed, which adds an additional layer of protection for the public.

College counsel also provided the panel with a number of cases which did confirm that the proposed penalty fell within a range of penalties imposed by other health colleges with similar allegation before them.

Mr. Mitchell did not make any submissions, other than to confirm his agreement with the proposed penalty.

Penalty 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 shall direct the Registrar to suspend the Member's certificate of registration for eight (8) weeks, to commence on today, April 24, 2013.
- c) The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration for a period of two (2) years that:
 - i. the College may, without notice, conduct random inspections of the Member's practice and examine his records as the College may require;
 - ii. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of four (4) over the two-year period;
 - iii. The Member shall pay to the College, within 15 days of each inspection, costs in respect of each inspection to a maximum of \$500 per inspection;
 - iv. The Member shall cooperate with the inspections; and
 - v. If the Member is an employer, will instruct his employees to cooperate with the inspections.
- d) The Member will sign an undertaking that he:
 - vi. Will only permit an optician (including himself) to perform refractions if that optician has valid and current refraction status from the College;
 - vii. Will not permit, counsel or assist unauthorized persons to prescribe or to dispense eyeglasses;
 - viii. Will not dispense without a prescription from an optometrist or physician;
 - ix. Will comply with the College's Standard on Records.

- e) The Member is required to pay the College a portion of its costs in this matter in the amount of \$1000 within 30 days of the date of this order.

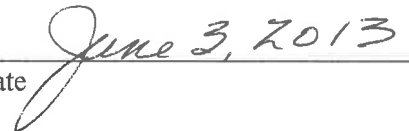
Reasons for Penalty Decision

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 actions.

I, Eve Hoch, 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

Fazal Khan

Paul Imola

Sheela Mooloo

Gloria Baltazar