

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

PANEL: Rob Vezina, Chairperson and Professional Member
Janice Schmidt, Professional Member
Catherine Rowntree, Professional Member
Omar Farouk, Public Member
Susan Carlyle, Public Member

BETWEEN:

| | | |
|---------------------------------|---|---------------------------------|
| COLLEGE OF OPTICIANS OF ONTARIO |) | |
| |) | <u>Rebecca Durcan</u> |
| |) | College of Opticians of Ontario |
| - and - |) | |
| |) | |
| |) | <u>Lindsay Kantor</u> for |
| |) | John Penner |
| JOHN PENNER, C-713 |) | |
| |) | |
| |) | <u>Johanna Braden</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | |
| |) | Heard: July 22, 2015 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on July 22, 2015 at the College of Opticians of Ontario (the “College”) at Toronto.

The Allegations

At the outset of the hearing, College Counsel requested leave to withdraw some of the allegations against John Penner (also referred to herein as the “Member”). She advised that some allegations could not be proven because of an absence of witnesses. Another allegation could not be proven because at this time, the College does not have specific regulations regarding opticianry records. The Member consented to the College’s request. The panel made the order.

The remaining allegations against the Member as stated in the Notice of Hearing dated March 3, 2014, are as follows (Schedule 1, the list of affected patients, is not included).

1. John Penner (“Mr. Penner”) has been a member of the College of Opticians of Ontario (the “College”) since approximately 1974.
2. At all material times Mr. Penner operated the optical store, “The Eyeglass Shoppe” located at 11 Erie Street South in Leamington, Ontario (“The Eyeglass Shoppe”).
3. From approximately January 2010 through to May 2012, Mr. Penner and/or The Eyeglass Shoppe submitted insurance claims to Green Shield Canada (“Green Shield”). Many of those claims:
 - a. did not have a valid prescription for the plan member from an optometrist or physician;
 - b. were for prescription eyewear that did not correspond with either the supporting prescription, the latest prescription Green Shield had on file for the plan member, or with the prescription indicated on the work order;
 - c. had no corresponding patient record or no valid invoice to support the insurance claim; and/or
 - d. contained a service date that indicated a new date that post-dated the plan member’s plan expiry date to accommodate reimbursement eligibility.
4. The insurance claims described in paragraph 3 were for the patients listed in Schedule 1.
5. As a result of those insurance claims, Green Shield remitted payment to Mr. Penner and/or The Eyeglass Shoppe in the amount of approximately \$6,940.
6. *Withdrawn.*
7. *Withdrawn.*
8. *Withdrawn.*
9. *Withdrawn.*
10. *Withdrawn.*
11. As a result of the above, the College alleges that Mr. Penner 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 contravened a provision of the *Opticianry Act, 1991*, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts (paragraph 26);
 - c. *Withdrawn*;
 - d. He signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement (paragraph 23);

- e. *Withdrawn;*
- f. *Withdrawn;*
- g. 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 unprofessional (paragraph 28).

Member's Plea

The Member admitted to the allegations of professional conduct set out in paragraphs 11(a), (b), (d) and (g) of the Notice of Hearing. With respect to allegation 11(g), the Member's admission was confined to an admission that he engaged in conduct in the course of practicing opticianry that would reasonably be regarded by members as unprofessional.

The panel conducted an oral plea inquiry. The panel was satisfied that the Member's admissions were voluntary, informed and unequivocal.

The Evidence

The parties presented an Agreed Statement of Facts, which was marked as Exhibit #2. It provided that the parties were agreed that the following facts may be accepted as true.

1. John Penner ("Mr. Penner") has been a member of the College of Opticians of Ontario (the "College") since approximately 1974.
2. This is the first time Mr. Penner has appeared before the Discipline Committee or has ever been the object of an investigation by the College.
3. At all material times Mr. Penner operated the optical store, "The Eyeglass Shoppe" located at 11 Erie Street South in Leamington, Ontario.
4. From approximately January 2010 through to May 2012, Mr. Penner submitted insurance claims to Green Shield Canada ("Green Shield"). Many of those claims:
 - a. did not have a valid prescription for the plan member from an optometrist or physician;
 - b. were for prescription eyewear that did not correspond with either the supporting prescription, the latest prescription Green Shield had on file for the plan member, or with the prescription indicated on the work order;
 - c. had no corresponding patient record or no valid invoice to support the insurance claim; and/or
 - d. contained a service date that indicated a new date that post-dated the plan member's plan expiry date to accommodate reimbursement eligibility.
5. The insurance claims described in paragraph 3 were for the patients listed in Schedule 1.
6. As a result of those insurance claims, Green Shield remitted payment to Mr. Penner and/or The Eyeglass Shoppe in the amount of approximately \$6,940.

7. If he were to testify, Mr. Penner would say that he often would duplicate a patient's prescription from his/her existing glasses, or would take a verbal prescription over the phone from an optometrist or physician. However, Mr. Penner acknowledges that he failed to make appropriate entries in the relevant patients' charts to confirm whether their prescriptions were obtained pursuant to either of these prescription methods.
8. If he were to testify, Mr. Penner would acknowledge that this deficient record keeping resulted in him being unable to produce a prescription as per s.5(1) of the *Opticianry Act, 1991*.
9. It is acknowledged that Mr. Penner engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1, and as set at paragraph 11 of the Notice of Hearing dated March 3, 2014 (the "Notice of Hearing"):
 - a. He contravened a standard of practice of the profession (paragraph 2);
 - b. 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);
 - c. [Intentionally left blank]
 - d. He signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement (paragraph 23);
 - e. [Intentionally left blank]
 - f. [Intentionally left blank]
 - g. 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 unprofessional (paragraph 28).

Decision

Having considered the evidence set out in the Agreed Statement of Facts, the Member's admissions, and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 11 (a), (b), (d), and (g) of the Notice of Hearing. With respect to the allegation at paragraph (g), the panel finds that the Member engaged in conduct that would reasonably be regarded by members as unprofessional.

Reasons for Decision

The panel reviewed and considered the Notice of Hearing, the Statement of Agreed Facts and the submissions of the parties, and found the facts support findings of professional misconduct.

Penalty

Penalty Submissions

The parties presented the panel with a Joint Submission on Penalty (Exhibit #3), which requested the panel to make an order as follows.

1. Mr. Penner shall be required to appear before the panel to be reprimanded immediately following the hearing or within 30 (thirty) days of the date of this Order;
2. The Discipline Committee shall direct the Registrar to suspend Mr. Penner's certificate of registration for four (4) months as follows:
 - i. The suspension shall commence on the date of this hearing and continue until September 17, 2015; and
 - ii. The suspension shall resume on January 17, 2016 and continue until March 17, 2016.
3. The Registrar will suspend two (2) months of the suspension ordered in paragraph 1(b)(ii) if Mr. Penner successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 1(d) of this order within six (6) months of the date of this order. In any event, Mr. Penner must complete the requirements set out in paragraph 1(d) of this order within 1 (one) year of the date of this Order;
4. The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on Mr. Penner's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, 1 (one) peer assessment review, the details of which are as follows:
 - i. The review shall not exceed \$300, the cost of which will be borne by Mr. Penner;
 - ii. The Peer Assessor will be chosen by the Registrar and will attend Mr. Penner's store on a date which will be scheduled ahead of time with Mr. Penner;
 - iii. The Peer Assessor will complete a report which will outline the review and any deficiencies and/or recommendations made;
 - iv. The Peer Assessor's report will be provided to Mr. Penner and the Registrar. The review will be deemed "successfully completed" once the Peer Assessor's report has been issued to both Mr. Penner and the Registrar;
 - v. No further College involvement will be required unless the Registrar, upon reviewing the report, feels that a registrar's investigation is required; and
5. Mr. Penner is required to pay the College a portion of its costs in this matter in the amount of \$2,000 within 30 days of the date of this order.

Penalty Decision

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

1. Mr. Penner shall be reprimanded immediately following the hearing or within 30 (thirty) days of the date of this Order;
2. The Registrar is directed to suspend Mr. Penner's certificate of registration for four (4) months as follows:
 - i. The suspension shall commence on the date of this hearing and continue until September 17, 2015; and
 - ii. The suspension shall resume on January 17, 2016 and continue until March 17, 2016.
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4. The Registrar is directed to impose a specified term, condition and limitation on Mr. Penner's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, 1 (one) peer assessment review, the details of which are as follows:
 - i. The review shall not exceed \$300, the cost of which will be borne by Mr. Penner;
 - ii. The Peer Assessor will be chosen by the Registrar and will attend Mr. Penner's store on a date which will be scheduled ahead of time with Mr. Penner;
 - iii. The Peer Assessor will complete a report which will outline the review and any deficiencies and/or recommendations made;
 - iv. The Peer Assessor's report will be provided to Mr. Penner and the Registrar. The review will be deemed "successfully completed" once the Peer Assessor's report has been issued to both Mr. Penner and the Registrar;
 - v. No further College involvement will be required unless the Registrar, upon reviewing the report, feels that a registrar's investigation is required; and
5. Mr. Penner is required to pay the College a portion of its costs in this matter in the amount of \$2,000 within 30 days of the date of this order.

Reasons for Penalty Decision

The panel understands that the penalty ordered should protect the public by addressing specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

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. The panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

The College submitted a Penalty Brief which contained several “like” cases. Upon reviewing the cases the Panel found the penalty agreed to was fair, adequately reflected the severity of the offense, and was in keeping with dispositions in other cases with similar circumstances.

I, **Rob Vezina**, 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:



October 5, 2015

Rob Vezina, Chairperson and Professional Member

Date

Janice Schmidt, Professional Member
Catherine Rowntree, Professional Member
Omar Farouk, Public Member
Susan Carlyle, Public Member