

3. Following the joint submission, the Panel made findings of misconduct against the Member and then imposed our order on penalty. These are the reasons in support of that order.

II. The Allegations of Misconduct

4. The allegations against the Member as stated in the Notice of Hearing, dated December 11, 2014, are as follows:

THE INQUIRIES, COMPLAINTS, AND REPORTS COMMITTEE OF THE COLLEGE OF OPTOMETRISTS OF ONTARIO has referred the following allegations about you to the Discipline Committee:

That from in or about 2010 to in or about 2014 you committed acts of professional misconduct in that you engaged in conduct or performed an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical under paragraph 39 of section 1 of Ontario Regulation 119/94 made under the *Optometry Act 1991*, S.O. 1991, c. 35, as set out in the particulars which are contained in Appendix "A" to this Notice of Hearing.

III. Member's Plea

5. The Member admitted the allegation of misconduct as set out in the Notice of Hearing dated January 27, 2015.
6. The Panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

IV. Agreed Statement of Facts

7. The parties filed an agreed statement of facts in support of the Member's plea. The parties further agreed that the facts set out in the paragraphs below reflect an accurate statement of the facts with respect to the allegations contained in the Notice of Hearing.
8. Dr. Samuell is an optometrist practising in Bayfield, Hannover and Kincardine Ontario who has been a member of the College of Optometrists of Ontario (the "College") since in or about 2002.
9. It is important to note that although the context of the allegations was the former conflict of interest regulations related to optometry under the Drug and Pharmacies Regulation Act; since the regulations have been amended the College has not made any allegations against Dr. Samuell with respect to conflict of interest. New conflict of interest regulations came into effect on April 15, 2014.

First Caution

10. In or about July of 2010, as a result of the receipt of information, the Registrar commenced an investigation into the conduct of Dr. Samuelli to determine whether or not he was in a conflict of interest with regard to his Hanover practice location at 220 10th Street. The issues under investigation were as follows:
 - a. Whether an advertisement in the newspaper is indicative that he was practising with an optician;
 - b. Whether the rent Dr. Samuelli was paying was normal for the area; and
 - c. Whether patients could directly access an optical dispensary from his office.
11. On or about July 28, 2010, Dr. Samuelli wrote to the Registrar and advised that he and the Optical Gallery "have solidified our business relationship with a formal sublease...", which he enclosed.¹
12. The sublease indicated that Dr. Samuelli shall pay \$250 per month to the Optical Gallery for the premises at 22011 Street in Hanover.²
13. Based on the sublease and the head lease (the lease between the optical dispensary and the landlord) submitted by Dr. Samuelli, including the floor plan of the Optical Gallery, the Registrar concluded as follows in his report to the Inquiries, Complaints and Reports Committee (the "ICRC") on or about August 17, 2010:

the rent that Dr. Samuelli pays is "normal for the area" based on the portion of the total space he occupies.
14. On or about January 6, 2011, based on the report of the Registrar, the ICRC decided to take no further action with respect to the rent he paid and the advertisement.³
15. The ICRC found that the then Conflict of Interest Regulation 550, R.R.O. 1990, made under the Drug and Pharmacies Regulation Act) prohibited a member from engaging in the practice of optometry where any of the public entrances or exits of the member's premises are within the premises of a retail merchant, optical company or ophthalmic dispenser or interconnecting therewith.
16. The ICRC stated as follows with respect to the conflict of interest:

¹ A copy of the letter from Dr. Samuelli dated July 28, 2010 was attached as Appendix "B" to the Agreed Statement of Facts.

² A copy of the sublease was attached as Appendix "C" to the Agreed Statement of Facts.

³ A decision of the ICRC dated January 6, 2011 was attached as Appendix "D" to the Agreed Statement of Fact.

The College has gone on record to say the current regulation is outdated and has made efforts to amend the regulation. However, the College has also continuously reminded optometrists, through Bulletin articles and meetings with members that the current conflict of interest regulation remains in force and has not changed.

17. With respect to the door between his office and the optical dispensary, the ICRC issued a written caution to Dr. Samuella and required that he provide proof of compliance with the regulations. In particular:
 - a. Dr. Samuella was cautioned to ensure that in any location where he practises in close proximity to an optical store or retail merchant, the public entrances or exits to his practice must not interconnect with the store; and
 - b. To provide proof that the door, which opens from his exam room into the optical dispensary, is not used as a public entrance or exit to his optometric office.
18. The ICRC noted in its decision that the caution about maintaining entrances that are not interconnected with optical stores or retail merchants serves as a warning to Dr. Samuella that any future complaints received by the College of a similar nature will be considered in light of this decision and the opportunity for change that the Panel has provided.
19. Dr. Samuella subsequently provided photos to the Registrar as proof that the door of his exam room with access to the optical outlet was not being used as a public entrance or exit to his optometric practice.

Second Caution

20. In or about February of 2012 the College received information about Dr. Samuella's practice in Hanover, which was submitted formally as a complaint on or about May 3, 2012. The complaint was as follows:
 - a. Dr. Samuella was advertising with a non-member, contrary to the then Professional Misconduct Regulation, Ontario Regulation 859/93; and
 - b. Dr. Samuella's public entrance/exit to his office remained within the premises of the Optical Gallery, contrary to the then conflict of interest regulation dispensary, Ontario Regulation 550, R.R.O. 1990.
21. In response to the complaint, Dr. Samuella wrote a letter dated June 12, 2012, a copy of which is attached as Appendix "E" to the Agreed Statement of Facts. In the letter he did not correct his misrepresentation regarding rent, Instead he reiterated it by asserting that he is practising as an independent contractor and his practice would be in compliance with the new regulations.

22. On or about November 9, 2012, the ICRC rendered its decision a copy of which is attached as Appendix "F" to the Agreed Statement of Facts. It found as follows:
- a. In advertising with a non-member, it found that although Dr. Samuell may have taken steps to remove his name from the impugned advertisement, it appears as though he had not acted in accordance with Ontario Regulation 859/93; and
 - b. From the photographs submitted and Dr. Samuell's own admissions, the public entrance and exit from Dr. Samuell's practice is within the premises of an optical store.
23. The ICRC issued a written caution to Dr. Samuell as follows:
- a. To ensure that he practises and conducts himself in a manner that does not contravene clause 1(1) 25 (ix) of the Professional Misconduct Regulation 859/93 (relating to the issue of advertising); and
 - b. To ensure that he complies with subsections 26(2) and (4) of Regulation 550, R.R.O. 1990 (relating to the issue of conflict of interest).
24. The ICRC again noted that the caution serves as a warning to Dr. Samuell that any future complaints received by the College of a similar nature will be considered in light of this decision and the opportunity for change that the Panel has provided.
25. It also repeated its sentiments about the conflict of interest regulation which was in force at the time:

The Panel recognizes the need for the College to update certain outdated regulations and acknowledges that the College has been in the process of amending the Conflict of Interest Regulation, as well as the advertising provisions of the Professional Misconduct Regulation. The College has gone on record to say the current regulation is outdated and has made efforts to amend the regulation. However, the College has also continuously reminded optometrists, through Bulletin articles and meetings with members that the current conflict of interest regulation remains in force and has not changed.

New Complaint

26. On or about July 9, 2013, the same complainant wrote a letter to the College stating that Dr. Samuell remained in contravention of the Conflict of Interest Regulation as his patients continued to use the same entrance and exit as the optical store and that he was not heeding the ICRC's caution.
27. In the course of investigating this complaint, on or about March 31, 2014, the ICRC requested that Dr. Samuell provide:

his written agreement with the Optical Gallery which allows him to practise as an independent contractor; and
copies of cancelled rent cheques over a three month period indicating rent payments for the premises in which he practised (220 10th Street, Hanover).

28. Dr. Samuell sent copies of cancelled cheques for March 1, 2014, April 1, 2014 and April 26, 2014, to the ICRC. He also sent a copy of his current Independent Contractor Agreement he executed with the owner of the Optical Gallery.⁴
29. On or about June 5, 2014, the ICRC wrote to Dr. Samuell requesting cancelled rent cheques for July, August and September, 2013 as the complaint had been made in July 2013.
30. Also on or about June 5, 2014, Dr. Samuell wrote an email to the ICRC, a copy of which is attached as Appendix "I" to the Agreed Statement of Facts, stating as follows:

"before the ICRC panel asked for copies of rent cheques, I had neglected to make any formal rent payments. The \$250 a month was not asked for by the owner, and I was not particularly anxious to pay it. I will however continue to make monthly payment by cheque from this point on."

31. Prior to February of 2014, Dr. Samuell had not been paying rent to the Optical Gallery.
32. Since then however he has done so each and every month. He also provided copies of cancelled cheques to the College from February 2014 to December 2014 Attached as Appendix "J" to the Agreement Statement of facts are copies of cheques from February 2014 to December 2014 as well as proof of their being deposited.

Misrepresentations regarding rent

33. Dr. Samuell misled the College about the fact that he was paying rent to the Optical Gallery from In or about 2010 when he provided the College with a copy of his sublease and made the statements at paragraph 6, above, to in or about March 2014.
34. Dr. Samuell knew or ought to have known that the College would have understood him to be paying rent to the Optical Gallery since in or about 2010 when the ICRC determined to take no further action about the rent he was paying because the Registrar determined that the rent he was paying was "normal for the area."

⁴ A copy of the independent contractor agreement was attached as Appendix "G" to the Agreement Statement of Facts. Copies of the cheques were attached as Appendix "H" to the Agreed Statement of Facts.

V. Finding of Misconduct

35. On the strength of the Agreed Statement of Facts, as well as the Member's plea, the Panel made a finding of misconduct as alleged in the Notice of Hearing.

VI. Joint Submission on Penalty

36. The Parties jointly submitted that the following Order should be imposed on the Member:

1. The penalty shall be as follows:

- a. Dr. Samuell shall be required to appear before the Discipline Committee to be reprimanded;
- b. Dr. Samuell shall pay the College's costs in the amount of \$6500 payable to the College of Optometrists of Ontario within six months of the date of the Order of the Discipline Committee;
- c. Dr. Samuell's certificate of registration shall be suspended for four weeks;
- d. Two weeks of the suspension referred to in paragraph c, above, shall be suspended upon the completion of the following conditions:
 - i. That Dr. Samuell unconditionally pass the ProBE Course at his own expense (Professional/Problem-Based Ethics) within twelve months of the date of the Order of the Discipline Committee and that he provides proof that he has done so to the Registrar; and
 - ii. That Dr. Samuell provides proof, acceptable to the Registrar, that he has and is paying rent to the Optical Gallery for a period of twelve months following the date of the Order of the Discipline Committee;
- e. Failing to meet the above conditions will result in Dr. Samuell immediately having to serve the remaining two weeks' suspension;
- f. The suspension shall commence on a date to be determined by the Registrar; and

37. The terms of the above penalty shall be recorded in the Register and available to the public.

VIII. Reasons for Order

38. In determining the appropriate order in this particular case we remind ourselves that the primary purpose of these proceedings is protection of the public; however, in addition to the

public interest we must also consider both the interests of the profession as a whole as well as the particular circumstances of the individual member.

39. When we consider the public interest we are mindful that the public must have confidence in the profession's ability to regulate itself effectively and in a manner that protects the public.
40. When we consider the interests of the profession we recognize that this committee owes a duty to enforce and maintain the high standards of practice that the public expects of our members and that members expect of themselves. In each case the committee must consider the extent to which a message to the profession is required to make it clear that the conduct in question will not be tolerated.
41. And thirdly, we must consider the unique and particular circumstances of the Member. The order must be appropriate, fair and reasonable to his circumstances and to the nature of the admitted allegations.
42. The Panel also gave considerable weight to the joint submission and the established principle that we should not depart from it unless satisfied that it would be contrary to the public interest or would bring the administration of justice into disrepute. We note that the joint submission was prepared by experienced counsel.
43. In the particular circumstances of this case, the rationale for accepting Dr. Samuells' admission of guilt in the allegation rests not on issues of conflict of interest or direct patient care concerns, but rather the member's lack of transparency and honesty in his dealings with the College. Specifically, Dr. Samuells informed the College that he was an independent contractor and provided documentation supporting the notion that monthly rent was being paid.
44. For a period of approximately four years (2010-2014) the member knowingly did not pay rent and made no effort to comply with two prior cautions specifically stating that reasonable rent was to be paid. As reflected in the Agreed Statement of Facts, the member knowingly allowed the misrepresentation of rent being paid to stand. This finding is sufficient to meet the definition of professional misconduct as described in the *Optometry Act 1991* (paragraph 39, section 1).
45. It is important however to acknowledge that Dr. Samuells was fully co-operative with the College's Disciplinary process and that no prior findings of professional misconduct are evident. The member also pleaded guilty to the allegations and entered into a Joint Submission of Penalties.
46. The rationale behind the penalties agreed in the Joint Submission was essentially to satisfy the concerns of the public, the profession and the member. Although this case may appear to revolve around conflict of interest concerns, this case has been considered mainly on the grounds of ethics and honesty in communications with a regulatory body by a professional.
47. The Panel feels that this decision and penalty act as a message to its members to ensure transparency and honesty in communication with a Regulatory College. The Panel feels that the

decisions rendered in this case fairly balance the rights of the member with the regulatory requirements placed on our profession via the RHPA Act and the Optometry Act, which mandate all of us to practice within certain ethical standards

48. At the conclusion of the hearing, Dr. Samuell waived his right of appeal and proceeded to receive the reprimand from the Discipline Panel.

IX. Costs

49. As noted above, the Panel hereby orders that Dr. Samuell shall pay costs in the amount of \$6,500 payable to the College of Optometrists of Ontario within six months of the date of the Order of the Discipline Committee.

Dated this 12 day of June 2015 at Toronto, Ontario.

(Signed)
Dr. Karin Simon, Chair

TEXT of PUBLIC REPRIMAND
Delivered on May 13, 2015
In the case of the
College of Optometrists of Ontario and Dr. J. Richard Samuel

I am certain this has been a difficult process for you.

What is of essence is your behaviour as regards the College. Every effort was made by the College to encourage you to alter your behaviour in the practice of Optometry with regard to the regulations of practice of the College at the time. Cautions were issued on two separate occasions, which seemingly were summarily disregarded.

In addition, the optics of your behaviour reflect a disregard of the cautions once the College had completed its process.

This would appear to be dishonest, and when a member of our profession acts dishonestly in regard to a College issue, it reflects poorly on our entire profession. It is not your prerogative to decide whether the regulations are fair or relevant - if you are a member of the College, as you are required to be in order to practice, you are bound by the College regulations in order to have the privilege of practicing.

We hope this experience allows you the opportunity to recalibrate your ethics. It is important the profession maintains its status through its practicing members.