

**DISCIPLINE COMMITTEE OF THE
COLLEGE OF OPTOMETRISTS OF ONTARIO**

B E T W E E N:

THE COLLEGE OF OPTOMETRISTS OF ONTARIO

-AND-

DR. JON BARNES

NOTICE OF HEARING

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

1. You have committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* (the “Code”) being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18, and defined in the following paragraphs of Ontario Regulation 119/94:
 - a. paragraph 1.14 in that you have failed to maintain the standards of practice of the profession;
 - b. paragraph 1.24 in that you failed to make and maintain records in accordance with Part IV of Ontario Regulation 119/94;
 - c. paragraph 1.25 in that you falsified a record relating to your practice;
 - d. paragraph 1.26 in that you signed or issued, in your professional capacity, a certificate, report or similar document that contains a statement you knew or ought to have known is false, misleading or otherwise improper, or omitted statements or information that you knew or ought to have known should be included.
 - e. paragraph 1.28 in that you submitted or allowed to be submitted an account for professional services that you knew or ought to know is false or misleading; and
 - f. paragraph 1.39 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.

Particulars of the allegations are set out at Appendix “A” to the Notice of Hearing.

TAKE NOTICE THAT THE DISCIPLINE COMMITTEE WILL HOLD A HEARING pursuant to the provisions of the Health Professions Procedural Code (the “Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, R.S.O. 1991 cs. 18 and the Discipline Committee’s Rules of Procedure (a copy of which is available to you upon request) for the purpose of deciding whether you are guilty of professional misconduct.

AND FURTHER TAKE NOTICE THAT a hearing will be held before a panel of the Discipline Committee of the College of Optometrists of Ontario on a date to be set at the Pre-Hearing Conference on the date to be determined at 65 St. Clair Avenue East, Suite 900, Toronto Ontario.

AND FURTHER TAKE NOTICE THAT at the hearing a panel of the Discipline Committee will do the following:

1. Consider the allegations of professional misconduct;
2. Make its findings based exclusively on evidence admitted before it; and
3. Determine whether in respect of the allegations you have committed an act or acts of professional misconduct.

AND FURTHER TAKE NOTICE THAT pursuant to subsections 51(2) of the Code, if the Panel finds you guilty of professional misconduct, it may make an order doing one or more of the following:

1. Directing the Registrar to revoke your certificate of registration.
2. Directing the Registrar to suspend your certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.
4. Requiring you to appear before the panel to be reprimanded.
5. Requiring you to pay a fine of not more than \$35,000 to the Minister of Finance.

AND FURTHER TAKE NOTICE THAT pursuant to section 53.1 of the Code if the Panel finds you guilty of professional misconduct the Panel may make an Order requiring you to pay all of part of the College’s legal costs and costs and expenses incurred in investigating this matter and conducting the hearing.

AND FURTHER TAKE NOTICE THAT you are entitled to be represented by counsel at the said Hearing and to call witnesses and to adduce evidence in answer to the allegations set out in this Notice of Hearing.

AND FURTHER TAKE NOTICE THAT a member whose conduct is being investigated in proceedings before the Discipline Committee is entitled to certain disclosure of evidence pursuant to section 42 of the Code. To facilitate that process, you or your lawyer may contact directly the lawyer for the College of Optometrists of Ontario. The College's lawyer in this matter is:

Julia J. Martin
Barrister and Solicitor
440 Laurier Avenue West, Suite 200
Ottawa ON
K1R 7X6

Tel: (613)513-6735

Email: julia@juliamartinlaw.com

AND FURTHER TAKE NOTICE THAT if you do not attend at the Pre-Hearing Conference on the date above, or on any subsequent date fixed by the Discipline Committee, the panel of the Discipline Committee may proceed in your absence and you will not be entitled to any further notice.

DATED at Toronto, Ontario this 10th day of September, 2020.

**COLLEGE OF OPTOMETRISTS
OF ONTARIO**

65 St. Clair Avenue East
Suite 900
Toronto, ON

[Original Signed]

Ira Bernard Teich
Interim Registrar and CEO

TO: Dr. Jon Barnes

c/o Counsel to Dr. Barnes

Appendix “A”

1. Dr. Jon Barnes is an optometrist who has practised in Ontario since in or about May 25, 1990.

Improper and False Billing

2. From in or about 2008 to in or about 2017, Dr. Jon Barnes improperly billed the Ontario Health Insurance Plan (“OHIP”) as follows:
 - a. He submitted claims for services that do not constitute insured services under the *Health Insurance Act* R.S.O 1990 c. H. 6 (the “HIA”), Revised Regulation Ontario 552/90, and the Schedule of Benefits for Optometry April 1, 2009 (the “Schedule”), including but not limited to prescription renewals, referral letters, frame selection and/or telephone advice, for the patients and on the dates listed at Schedule 1;
 - b. He submitted claims using improper OHIP billing codes where the patient’s condition was ineligible for the code used, the code was incorrect, or the code was invalid for the patients and on the dates listed at Schedule 2;
 - c. He submitted false claims for services that were not rendered to patients within days of having made another claim for them contrary to the HIA and the Schedule for the patients and on the dates listed at Schedule 3; and
 - d. He submitted false claims for services that were not rendered to patients where he did not see the patients at all and/or failed to maintain any record of having seen the patient contrary to the HIA and the Schedule for the patients and on the dates listed at Schedule 4.
3. Further particulars of the improper billing referred to in paragraph 2 are contained in the expert report dated October 22, 2019.

Failure to Maintain Required Records

4. Dr. Barnes failed to maintain the following records as required by Part IV of *Ontario Regulation 119/94*:
 - a. day sheets as required by section 8 of *Ontario Regulation 119/94*; and
 - b. the information required to be included in patient records by subsection 10(2) of *Ontario Regulation 119/94* was missing for patients listed at Schedules 1 to 4.

Failure to Maintain Standard of Practice

5. Some of Dr. Barnes' records for the patients listed at Schedules 1 to 4 are incomplete and/or incomprehensible.
6. Section 5.1 of the *Optometric Practice Reference* requires members to maintain records that are legible and complete and part of the care and management of patients that a member maintain complete and accurate records.
7. Dr. Barnes' recordkeeping deficiencies therefore constitute a failure to maintain the standards of practice of the profession.