

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

Panel: Dr. Margaret Armstrong, Chair
Dr. Dino Mastronardi,
Dr. Peter Rozanec,
Ms. Shoshana Gladstone,
Mr. John Van Bastelaar,

Professional Member
Professional Member of Council
Professional Member
Public Member of Council
Public Member of Council

BETWEEN

The College of Optometrists
of Ontario)

Ms. Julia Martin
Counsel for the College
of Optometrists of Ontario

-and-)

Dr. Anthony Angelone)

Ms. Tracey Tremayne-Lloyd
and Ms. Barbara Prikrylova
Counsels for Dr. Anthony Angelone

Ms. Jill Dougherty
Independent Legal Counsel

Heard on October 7, 2015

DECISION AND REASONS

I. Introduction

1. This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario on October 7th 2015 in Toronto, Ontario, at 65 St. Clair Avenue East, Suite 900.
2. The purpose of the hearing was to consider allegations of professional misconduct against Dr. Anthony Angelone.
3. The hearing was called to order at 10:10am rather than 10am due to the late arrival of Dr. Angelone. The five members of the Discipline Panel, referred to above, were in attendance; as

well as Dr. Anthony Angelone, the Counsel for Dr. Angelone, Ms. Tremayne-Lloyd and Ms. Prikrylova; the Counsel for the College, Ms. Martin, as well as Ms. Dougherty, who was serving as independent legal counsel to the Discipline Panel.

4. The hearing was open to the public.

II. The Allegations of Misconduct

5. Ms. Martin filed the Notice of Hearing as Exhibit 1. The allegations against Dr. Angelone as stated in the **Notice of Hearing** were 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:

1. That from in or about 2009 to in or about 2014 that you committed acts of professional misconduct under paragraph 14 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; and
 2. That you are incompetent pursuant to subsection 52(1) of the Health Professions Procedural Code which is Schedule 2 to the Regulated Health Professions Act, 1991 R.S.O. 1991 c. 18, as set out in the particulars which are contained in Appendix “A” to this Notice of Hearing.”
6. Three minor typographical errors appearing in Appendix “A” of the Notice of Hearing were corrected and accepted by both parties.
 7. Ms. Martin submitted an Agreed Statement of Facts as Exhibit 2. Paragraph 3 in Exhibit 2 states: “The College of Optometrists of Ontario hereby withdraws the second allegation set out in the Notice of Hearing, which was that Dr. Angelone is incompetent contrary to subsection 52(1) of the Health Professions Procedural Code which is Schedule 2 to the Regulated Health Professions Act, 1991 S.O. 1991 c. 18.” The College proceeded with the remainder of the allegations in the Notice of Hearing.

III. Member's Plea

8. Dr. Angelone admitted the allegation of misconduct as set out in the Notice of Hearing.
9. His admission was confirmed by the Chair to be voluntary, informed and unequivocal by way of an oral plea inquiry.

IV. Agreed Statement of Facts

10. There was an Agreed Statement of Facts presented by counsel in support of the Member’s plea.

11. The parties agreed that the facts that follow constitute an accurate statement of the facts with respect to the allegations contained in the Notice of Hearing.

12. From in or about 2009 to in or about 2014, Dr. Angelone did or failed to do the following in respect of the following patients:

1) [REDACTED]

- a. Dr. Angelone conducted five examinations of this patient between 2009 and 2013;
- b. At each visit Dr. Angelone determined that there was insignificant refractive error and that no treatment was indicated;
- c. The patient was experiencing blurred vision in the right eye and progressive reduction in entering unaided visual acuity; and
- d. Notwithstanding the foregoing, Dr. Angelone failed to identify this patient's significant hyperopic refractive error.

2) [REDACTED]

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to perform a cycloplegic refraction and dilated fundus examination;
- c. Dr. Angelone failed to investigate the etiology of the reduction of visual acuity in the left eye; and
- d. Dr. Angelone failed to properly diagnose refractive amblyopia and failed to record any discussion regarding the treatment or correction of the amblyopia.

3) [REDACTED]

- a. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- b. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- c. Dr. Angelone made an inappropriate diagnosis of "congenital amblyopia";
- d. Dr. Angelone made an inappropriate diagnosis of "no microstrab"; and
- e. Dr. Angleone failed to offer or discuss amblyopia therapy.

4) [REDACTED]

- a. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- b. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- c. Dr. Angelone failed to explain or investigate the etiology of the reduced visual acuity in the left eye; and

- d. Dr. Angelone inappropriately recommended an annual follow up when an earlier follow up was called for given the reduced vision in the left eye;

5)

- a. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- b. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in the left eye;
- c. Dr. Angelone's diagnosis of amblyopia was inappropriate given that the clinical findings were not indicative of refractive or strabismic amblyopia; and
- d. Dr. Angelone failed to offer or discuss any amblyopia treatment other than refractive correction.

6)

- a. Dr. Angelone failed to take an adequate case history;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- c. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- d. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in the left eye; and
- e. Dr. Angelone's failure to make a diagnosis and to take an adequate history prevented him from considering different treatment options for this patient.

7)

- a. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- b. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- c. Dr. Angelone failed to investigate the etiology of the reduced vision in the left eye;
- d. Dr. Angelone's diagnosis of amblyopia was inappropriate given that the clinical findings were not indicative of refractive or strabismic amblyopia; and
- e. Dr. Angelone failed to offer or discuss any amblyopia treatment.

8)

- a. Dr. Angelone failed to record the prism base for the patient's current glasses;
- b. Dr. Angelone failed to record the entering aided visual acuities as required by subsection 4.2 of the Optometric Practice Reference ("OPR");
- c. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- d. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;

- e. Dr. Angelone failed to investigate the etiology of the reduced vision in the right eye;
- f. Dr. Angelone failed to sufficiently investigate the patient 's binocular vision which was warranted in this case;
- g. Dr. Angelone's diagnosis of "no microstrab" was inappropriate and could not have been reached based on the testing he performed;
- h. Dr. Angelone failed to make a diagnosis addressing the patient's reduced vision in the right eye and the binocular status; and
- i. Dr. Angelone failed to offer treatment for the reduced vision in the right eye other than refractive correction.

9)

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to perform a cycloplegic refraction and dilated fundus examination which were indicated for this patient;
- c. Dr. Angelone failed to investigate the etiology of the reduced vision;
- d. Dr. Angelone's diagnosis of amblyopia was inappropriate given that the clinical findings were not indicative of refractive or strabismic amblyopia; and
- e. Dr. Angelone failed to offer or discuss any amblyopia treatment.

10)

- a. Dr. Angelone failed to record the entering visual acuity as required by subsection 4.2 of the OPR;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction; and
- c. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in the right eye.

11)

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- c. Dr. Angelone failed to make a diagnosis when the clinical findings indicated a diagnosis of refractive amblyopia in the left eye;
- d. Dr. Angelone failed to record the details of the recommendations and proposed treatment plan; and
- e. Dr. Angelone failed to recommend spectacle therapy when it was indicated in this case.

12)

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- c. Dr. Angelone failed to sufficiently evaluate the patient's binocular vision which was indicated given her history;
- d. Dr. Angelone failed to investigate the etiology of the reduced vision in the left eye; and
- e. Dr. Angelone's diagnosis of "congenital amblyopia" was inappropriate.

13)

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- c. Dr. Angelone failed to investigate the etiology of the reduced vision in the left eye;
- d. Dr. Angelone's diagnosis of "congenital amblyopia" was inappropriate; and
- e. Dr. Angelone failed to offer or discuss any treatment for amblyopia other than safety glasses.

14)

- a. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- b. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- c. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in the right eye; and
- d. Dr. Angelone's diagnosis of "no microstrabismus" was inappropriate and could not have been reached on the testing he performed.

15)

- a. Dr. Angelone failed to record the entering visual acuity as required by subsection 4.2 of the OPR;
- b. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
- c. Dr. Angelone failed to record the details of the non-cycloplegic refraction;
- d. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in the right eye; and
- e. Dr. Angelone failed to record the details of the spectacle prescription given to the patient.

16)

- a. Dr. Angelone failed to record the oculomotor status as required by subsection 4.2 of the OPR;
 - b. Dr. Angelone failed to recognize or investigate the discrepancy between the corrected acuity at distance and the near acuity;
 - c. Dr. Angelone failed to explain or investigate the etiology of the reduced vision in both eyes.
13. The College's expert, Dr. Catherine Chiarelli, an optometrist whose practice has an emphasis in pediatric patients, reviewed Dr. Angelone's patient records for the sixteen patients referred to above and concluded that Dr. Angelone failed to maintain the standard of practice of the profession in his care for these patients.

V. Finding

14. After reviewing the Agreed Statement of Facts and hearing submissions from both Counsel, the Panel unanimously found that the facts set out in the Agreed Statement of Facts, together with the Member's guilty plea to the allegations in the Notice of Hearing, proved that Dr. Angelone was guilty of professional misconduct as set out in the Notice of Hearing.

VI. Joint Submission on Penalty

15. Ms. Martin submitted a Joint Submission on Penalty which was filed as Exhibit 3.
16. The Joint Submission on Penalty read as follows:
- a) Dr. Angelone shall be required to appear before the Discipline Committee to be reprimanded;
 - b) Dr. Angelone shall pay the College's costs in the amount of \$10,000 payable to the College of Optometrists of Ontario within six months of the date of the Order of the Discipline Committee;
 - c) Dr. Angelone shall complete twenty hours of Continuing Education in pediatric optometry to be approved by the Registrar within twenty-four (24) months of the date of the Order of the Discipline Committee;
 - d) The imposition of a condition on Dr. Angelone's certificate of registration that he not treat children eight years of age and under; and
 - e) In order to have the condition in paragraph d, above, removed from his certificate of registration Dr. Angelone must successfully complete the following mentoring program:

- i) For a period of two months, one day per week, Dr. Angelone must attend at the office of an optometrist whose practice has an emphasis in pediatric patients and approved by the Registrar;
 - ii) The mentoring will focus on how to evaluate eye health and the binocular vision assessment of children, the treatment and correction of amblyopia and strabismus, history taking and charting;
 - iii) Dr. Angelone will pay any expenses related to the mentoring including the mentor's fees;
 - iv) At the conclusion of the mentorship the expert will provide a report to the College providing an opinion about whether Dr. Angelone is capable of assessing and treating children eight years of age and under. If the mentor's opinion is that he is capable of assessing and treating children eight years of age and under then the condition will be removed;
 - v) If the mentor's opinion is that Dr. Angelone is not capable of assessing and treating children eight years of age and under then Dr. Angelone must complete additional two month mentorship(s) until such time as he obtains a positive report of the mentor. The same requirements would apply to each additional mentorship; and
 - vi) For a period of six months following the removal of the condition on Dr. Angelone's certificate, the College will conduct unannounced practice inspections to ensure that he is maintaining the standard of practice of the professions with respect to the assessment and treatment of children eight years of age and younger. The practice inspections shall be at Dr. Angelone's expense.
- f) The terms of the above penalty shall be recorded in the Register and available to the public.

VII. Submissions on Penalty

a) College's Submissions

17. Ms. Martin was asked by the Chair to make submissions as to the penalty. She submitted that the proposed penalty was appropriate and fair.
18. Mitigating factors presented to the panel for consideration by the College included the following:
- i) Dr. Angelone demonstrated recognition and acknowledgement of the risk to patients resulting from his conduct.
 - ii) Following receipt of the Notice of Hearing, Dr. Angelone offered to (and did) stop treating patients 8 years of age and under as an interim measure.

- iii) Dr. Angelone offered to (and did) write a letter to each of the sixteen patients (and parent/guardian) to alert them to the situation of potentially inadequate care along with an offer to pay for the re-examination of the child by another optometrist.
- iv) Dr. Angelone cooperated throughout the process.
- v) Dr. Angelone pled guilty to the allegation of the College which in turn saved the College time and money in its legal proceedings.
- vi) There was no dishonesty associated with this case.

19. Aggravating factors presented to the panel for consideration by the College included the following:

- i) The misconduct that took place is of a serious nature. In order to have reached the Discipline Committee, the alleged conduct of the Member must have been viewed as being of a nature that would (if proved) require consequences more serious than those that could be imposed by other College committees.
- ii) There were sixteen children affected by Dr. Angelone's misconduct indicating a significant prevalence.

20. Ms. Martin did not offer any case law as she indicated that there have been no cases of standards issues (analogous to this case) heard by the Discipline Committee at the College of Optometry of Ontario since 2003.

21. Ms. Martin submitted that the proposed penalty meets the criteria of protecting the public by imposing a condition that does not permit the Member any opportunity for further conduct of concern until the Member has proven he is capable. Further, she submitted that the penalty deters other members from this conduct due to the remediation involving both continued education and a mentorship program. Dr. Angelone himself will bear the cost of the penalty in addition to the public reprimand as specific deterrence.

22. Ms. Martin indicated that both Counsel for the College and Counsel for the Member worked hard to put together this agreement and she urged the panel to accept it.

b) Member's Submission

23. Ms. Tremayne-Lloyd made submissions with respect to the Joint Submission on Penalty. She pointed out that this case involves acts of omission rather than commission, with no deliberate offense on the part of Dr. Angelone. In addition, she indicated that Dr. Angelone has been a Member of good standing since 1975 and that a tainted record (i.e. a finding of professional misconduct) is significant in itself, since any damage to a Member's professional reputation is punitive.

24. Counsel for the Member pointed out that the Member showed accountability for the misconduct, in referring to the letter that Dr. Angelone sent to each of the patients involved,

making the families aware that their children may not have been diagnosed and treated appropriately, providing contacts for optometry offices with an emphasis on pediatrics and offering to pay for those examinations. Ms. Tremayne-Lloyd emphasized the Member's accountability for the errors made and that he immediately stopped treatment of patients of this age group upon receipt of the Notice of Hearing.

25. Ms. Tremayne-Lloyd further submitted that case law established that a Discipline Panel should not reject a Joint Submission on Penalty unless it is completely contrary to the public interest.

c) Independent Legal Counsel's Advice

26. Independent Legal Counsel for the panel, Ms. Dougherty, was asked for advice by the Panel prior to their recess to consider the penalty. She told the panel that penalties of suspension are frequently reserved for cases of moral turpitude. In standards cases, consideration of what is needed to remediate the member should occur. The penalty should fall within a reasonable range with respect to deterrence of the member and the profession at large in addition to protecting the public. Ms. Dougherty also pointed out to the Panel that the Ontario Court of Appeal has ruled that a Joint Submission on Penalty ought to be accepted unless it is contrary to public interest or would bring the administration of justice into disrepute.

VIII. Order and Reasons on Penalty and Costs

27. For the reasons that follow, the Panel unanimously accepted the Joint Submission on Penalty and concluded that it would constitute a fit and appropriate order in all of the circumstances.
28. The Panel believes the Joint Submission meets the purposes of:
1. The protection of the public;
 2. The specific deterrence of the member from this type of conduct; and
 3. The general deterrence to ensure that other members of the profession will not engage in conduct of this nature.
29. The Panel found that the public is protected by ordering Dr. Angelone to complete mandatory pediatric continuing education hours to be completed in a limited time frame and by placing a condition on Dr. Angelone's certificate of registration that he not treat children eight years of age and under. The mentoring program that Dr. Angelone must complete in order to have the condition removed from his certificate of registration is substantial and its successful completion along with unannounced practice inspections by the College thereafter will minimize the potential of recurrence.

30. Specific deterrence for the Member is achieved by the public and member accessibility to the details and findings of the hearing and oral reprimand. The Member was also ordered to pay the College's costs in the amount of \$10 000, serving to indemnify the College for a portion of the costs incurred by it in this case. Dr. Angelone will have to bear further costs in order to meet the requirements to lift the condition from his certificate of registration, which will serve as a specific deterrent to Dr. Angelone.
31. The remediation ordered in the Penalty which includes both the mandatory continuing education hours and the mentorship followed by practice assessments in order to have the condition removed from the Member's license serves as a general deterrent to the College's members. The public nature of the findings in addition to the costs order will also deter members generally from engaging in similar misconduct.
32. In consideration of mitigating and aggravating factors, the Panel found the penalty to be appropriate to the nature of the professional misconduct while protecting the public and preserving the public's confidence in the profession.
33. At the conclusion of the hearing, Dr. Angelone waived his right of appeal and proceeded to receive the reprimand from the Discipline Panel.

Dated this 15th day of December 2015 at Oakville, Ontario.

signed

Dr. Margaret Armstrong, Chair

Oral Reprimand delivered Oct. 7th 2015 to Dr. Anthony Angelone by Discipline Committee,
College of Optometrists of Ontario

Dr. Angelone:

As part of its penalty order, this Discipline Panel has ordered that you receive a Reprimand. You agreed to this as part of your Joint Submission with the College.

The fact that you have received this Reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you are guilty of professional misconduct under paragraph 14 of section 1 of Ontario Regulation 119/94 made under the Optometry Act, 1991. You have failed to maintain the standards of practice of the profession.

The panel views this pattern of misconduct as serious. The prevalence of this misconduct (relating to 16 patients) is concerning, which is why we have placed a restriction on your certificate of registration that you not treat children 8 years of age and under.

We are encouraged by your cooperation with the College thus far and further encourage you to take what you have learned through this process and apply it to your practice for the benefit of all your patients.

We also strongly encourage you to fully complete the mentorship portion of the penalty and seek the removal of the condition from your license.

We expect you to comply with the terms, conditions and limitations imposed by the penalty.