

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

Panel: Dr. Karin Simon, Chair  
Dr. Dennis Ruskin  
Dr. Margaret Armstrong  
Ms. Shoshana Gladstone  
Ms. Laila Kanji

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

## BETWEEN

The College of Optometrists  
of Ontario

-and-

Dr. Gordon Ng

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

Mr. Syed Abid Hussain  
Counsel for Dr. Gordon Ng

Ms. Julie Maciura  
Independent Legal Counsel

**Heard on June 15, 2016**

## DECISION AND REASONS FOR DECISION

This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario on the 15th day of June 2016, in Toronto, Ontario, at 10:00 a.m. at 65 St. Clair Avenue East, Suite 900.

The purpose of the hearing was to consider allegations of professional misconduct against Dr. Gordon Ng.

The five members of the Discipline Panel, referred to above, were in attendance, as well as Dr. Gordon Ng; Counsel for Dr. Ng, Mr. Hussain; Counsel for the College, Ms. Martin; as well as Ms. Maciura, who was serving as independent legal counsel to the Discipline Panel.

The hearing was called to order at 10:00 am. The Chair introduced the Panel and the other people present in the room.

### **Allegations and Evidence**

College Counsel filed the Amended Notice of Hearing as Exhibit 1.

The Amended Notice of Hearing included specified allegations against Dr. Ng as follows:

“You committed an act or acts of professional misconduct as provided by paragraph 51(1)(c) of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 and as set out by subsection 1(1) of Ontario Regulation 859/93, as amended, made under the *Optometry Act, 1991*, S.O. 1991, c. 35, as follows:

1. From in or about April 2013 to in or about December 2013, you failed to make and/or maintain the following records as required by Part IV of Ontario Regulation 119/94 which is professional misconduct under paragraph 27 of subsection 1(1) of Ontario Regulation 859/93:
  - i. You failed to make and/or maintain an appointment book as required by section 8 of Ontario Regulation 119/94 in that it did not include the names of each patient you treated or examined or for whom you provided a service;
  - ii. You failed to make and/or maintain financial records for the patients listed at Appendix A and B to the Notice of Hearing as required by section 9 of Ontario Regulation 119/94; and
  - iii. You failed to maintain computerized records for the patients listed at Appendix B such that they could be accessible by an investigator as required by paragraph 12(a) of Ontario Regulation 119/94.
2. From in or about April to in or about December 2013, you failed to issue receipts to your patients which is professional misconduct under paragraph 35 of subsection 1(1) of Ontario Regulation 859/93.
3. Also from in or about April 2013 to in or about December 2013, you engaged in the following conduct or performed the following act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical which is professional misconduct under paragraph 53 of subsection 1(1) of Ontario Regulation 859/93:
  - i. You failed to file and store patient records in an organized manner; and
  - ii. You failed to ensure the confidentiality of your patients’ records by leaving them exposed in your examination room and by storing them unsupervised in an unlocked filing cabinet in your waiting room.”

### **Plea**

A plea of guilty to the allegations was entered on Dr. Ng’s behalf.

## **Agreed Statement of Facts**

College Counsel entered an Agreed Statement of Facts that was signed by Dr. Ng and a College representative and was marked as Exhibit 2.

The Agreed Statement of Facts provided as follows:

1. Dr. Gordon Ng hereby pleads guilty to the allegations contained in the Amended Notice of Hearing dated January 27, 2016, which is attached as Schedule "A" to the Agreed Statement of Facts, that he committed acts of professional misconduct under paragraphs 27, 35 and 53 of subsection 1(1) of Ontario Regulation 859/93, as amended, made under the *Optometry Act, 1991*. S.O. 1991, c. 35.

## **Background**

2. Dr. Ng is an optometrist practising in a solo practice in Toronto.
3. As a result of an Order of a panel of the Discipline Committee dated August 8, 2012, Dr. Ng was required to undergo a practise inspection within six (6) months of completing a specified Ethics Course.
4. On September 9, 2013, an investigator attended Dr. Ng's practice to complete the practice inspection as required. The practice inspection revealed concerns with Dr. Ng's practice.
5. Another investigator was subsequently appointed to conduct follow up on some of the concerns identified in the inspection report. That investigator attended Dr. Ng's practice on December 3 and 10, 2013.

## **Results of Inspection and Investigation**

6. The review of Dr. Ng's practice from the inspection and investigation revealed the following:
  - a. Dr. Ng did not maintain an appointment book with the names of each patient he treated or examined or for whom he provided a service;
  - b. Dr. Ng did not make and/or maintain financial records for the patients listed at Appendices A and B to the Amended Notice of Hearing;
  - c. Dr. Ng did not maintain his computerized records for the patients listed at Appendix B to the Amended Notice of Hearing such that the investigator could access them;
  - d. Dr. Ng did not provide receipts to all of his patients because his patients paid him in cash for his services and he would only handwrite a receipt if a patient requested it;
  - e. Dr. Ng's patient records were not stored in an organized way rather they were in piles all around his office, in boxes and filing cabinets. The records were not stored alphabetically or chronologically with files from a broad range of years mixed together and sitting in piles; and

- f. Dr. Ng does not have a receptionist and patient records were stored in an unlocked cabinet in the waiting area, an unlocked cabinet by the reception desk and in piles on the reception desk. These records could be accessed by members of the public.

## Conclusion

7. From in or about April 2013 to in or about December 2013, the Member failed to make and/or maintain the following records as required by Part IV of Ontario Regulation 119/94 which is professional misconduct under paragraph 27 of subsection 1(1) of Ontario Regulation 859/93:
  - iv. The Member failed to make and/or maintain an appointment book as required by section 8 of Ontario Regulation 119/94 in that it did not include the names of each patient the Member treated or examined or for whom the Member provided a service;
  - v. The Member failed to make and/or maintain financial records for the patients listed at Appendix A and B to the Notice of Hearing as required by section 9 of Ontario Regulation 119/94; and
  - vi. The Member failed to maintain computerized records for the patients listed at Appendix B such that they could be accessible by an investigator as required by paragraph 12(a) of Ontario Regulation 119/94.
8. From in or about April to in or about December 2013, the Member failed to issue receipts to his patients which is professional misconduct under paragraph 35 of subsection 1(1) of Ontario Regulation 859/93.
9. Also from in or about April 2013 to in or about December 2013, the Member engaged in the following conduct or performed the following act or acts that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional or unethical which is professional misconduct under paragraph 53 of subsection 1(1) of Ontario Regulation 859/93:
  - iii. The Member failed to file and store patient records in an organized manner; and
  - iv. The Member failed to ensure the confidentiality of his patients' records by leaving them exposed in his examination room and by storing them unsupervised in an unlocked filing cabinet in his waiting room.

The Agreed Statement of Facts was dated June 13, 2016 and was signed by Dr. Ng and by the Registrar of the College.

In the Agreed Statement of Facts Dr. Ng admitted that he engaged in the behaviour alleged and agreed that the behaviour constituted professional misconduct pursuant to paragraphs 27, 35 and 53 of the professional misconduct regulation under the *Optometry Act, 1991*.

After reviewing the Agreed Statement of Facts, College Counsel and Defence Counsel asked the Panel to find Dr. Ng guilty of the professional misconduct as set out in the Agreed Statement of Facts.

## Finding

The Discipline Panel found that the facts set out in the Agreed Statement of Facts were sufficient to support the findings of professional misconduct to which Dr. Ng pleaded guilty and accordingly found him guilty of professional misconduct under the following paragraphs of subsection 1(1) of the version of Ontario Regulation 859/93 made under the *Optometry Act, 1991* that was in force at the time of the misconduct: paragraph 27 (Failing to make and maintain records as required by the regulations); paragraph 35 (Failing to issue a statement or receipt to a patient or to a third party responsible for the payment of the account of a patient); and paragraph 53 (Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional or unethical).

## Evidence on Penalty

College Counsel filed a Joint Submission on Penalty (and Costs) dated June 15, 2016 and signed by Dr. Ng and the College Registrar which was made Exhibit 3 in the hearing. It provided as follows:

“The Parties hereby jointly submit that the following is the appropriate penalty for the findings of guilt on the allegations as set out in the Agreed Statement of Facts:

1. A reprimand.
2. The payment of the College's costs of \$5000 within three (3) months of the date of the Order of the Discipline Committee.
3. A two month suspension of Dr. Ng's certificate of registration which would be fully suspended if Dr. Ng successfully completes a period of practice coaching within five months of the date of the Order of the Discipline Committee. The details of the practice coaching are as follows:
  - (a) The coaching will be for a total of twenty-four hours (based on 4 x 6 hour sessions) commencing within thirty days of the date of the Order of the Discipline Committee;
  - (b) The coaching shall be at Dr. Ng's own expense;
  - (c) The practice coach and the coaching plan shall be approved by the Registrar;
  - (d) The coaching will focus on but not be limited to record keeping including: ensuring that patient health records meet professional regulatory requirements as described in the OPR, the maintenance of an appointment book, the making and maintaining of financial records including receipts, the appropriate methods of filing and storing patient records, and the maintenance of and access to computerized records.
  - (e) The coaching will take place primarily at the coach's office; however the coach will also attend at Dr. Ng's office to assist in developing the coaching plan and may attend again during the coaching period at his or her discretion.

- (f) At the conclusion of the coaching period the practice coach will send a report to the Registrar indicating whether or not, in the opinion of the coach, Dr. Ng understands the issues covered by the coaching and whether he has implemented improvements to his practice, as recommended by the coach.
- (g) In the event of a report from the practice coach that is not acceptable to the Registrar, Dr. Ng can repeat the practice coaching period once more under the same conditions as above. This is to be completed within twelve months of the date of the Order of the Discipline Committee.
- (h) If Dr. Ng fails to successfully complete the practice coaching, he would serve the two months suspension."

College Counsel filed as Exhibit 4 the previous discipline decision (heard August 8, 2012) against Dr. Ng. No other evidence was called by the parties with respect to penalty.

### **Joint Submission on Penalty and Costs**

The Discipline Panel heard submissions by College Counsel and Defence Counsel in support of the Joint Submission on Penalty.

College Counsel made submissions about why the Joint Submission on Penalty was appropriate in the circumstances of this case. She submitted that the Panel should consider the following principles:

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.

College Counsel then explained how the proposed penalty in the Joint Submission on Penalty would satisfy the above factors and also pointed out a number of mitigating factors which supported the Joint Penalty submissions including the fact that Dr. Ng cooperated with the investigation, pled guilty, and agreed with the College on penalty and costs. College Counsel further submitted that the misconduct was on the less serious side.

The aggravating factors mentioned by College Counsel were the fact that Dr. Ng did have a previous discipline finding and that these new issues arose fairly quickly on the heels of his last discipline hearing.

College Counsel reiterated that the Panel should not reject or vary the Joint Penalty Submission unless the proposed penalty was so far outside the range of appropriate penalties that it would be contrary to the public interest and bring the administration of the discipline process into disrepute.

Mr. Hussain made submissions about circumstances affecting Dr. Ng at the time of the misconduct, advised the Panel that Dr. Ng had taken steps to improve his record keeping in advance of the hearing and encouraged the Panel to accept the Joint Submission on Penalty.

After deliberating and considering the submissions of counsel, the Panel accepted the Joint Submission on Penalty.

The Panel understood that it should not vary or reject the Joint Submission on Penalty unless the proposed penalty is so far outside the range of appropriate penalties that it would be contrary to the public interest and would bring the administration of the discipline process into disrepute.

The panel considered the mitigating and aggravating factors that were outlined by the parties. The mitigating factors included the admission of guilt by Dr. Ng. By entering into an Agreed Statement of Fact and Joint Submission on Penalty, Dr. Ng gave up his right to a full hearing and thereby saved the College considerable time and expense that would accompany a full hearing. The College was not required to proceed with a potentially lengthy and costly hearing to prove the allegations.

The Panel also considered that Counsel for Dr. Ng advised that Dr. Ng had already taken steps to organize his records as a result of the investigation into his practice.

Aggravating factors which were considered by the Panel include Dr. Ng's previous finding of misconduct and the relatively short period of time between the first discipline hearing and the second referral to discipline.

The Panel agreed that the Joint Submission on Penalty addressed the principle of public protection. A two month suspension is a serious penalty and while Dr. Ng has the potential to suspend the suspension by successfully completing the coaching, that length of a suspension would be taken seriously by both Dr. Ng and his peers. This would serve the principles of specific and general deterrence by preventing Dr. Ng and others from repeating the conduct, which is the best way to protect the public.

The Panel hopes and indeed expects that Dr. Ng will complete the coaching program, as the Panel believes that it is clear Dr. Ng requires remediation in this area. His patients are entitled to expect that he meets all of the standards of the College, including keeping accurate and timely records.

After waiving his right to appeal, Dr. Ng received a public reprimand. That reprimand will be part of the public portion of the Register and part of Dr. Ng's record with the College. The reprimand delivered by the Panel included a strong message to Dr. Ng that his unprofessional behaviour and actions eroded public confidence and brought the entire profession into disrepute. The Panel advised Dr. Ng that if he found himself before a Panel of the Discipline Committee in the future he should expect a much harsher penalty the next time.

The reprimand, and the fact that the reprimand will be posted on the public register, all serve the principles of specific deterrence and general deterrence. The principle of transparency has also been met by the fact that the outcome of the hearing, including the reprimand, will be available to the public on the College's website.

Dr. Ng was obligated to contribute to the College costs arising from the Discipline process, in addition to being responsible for coaching costs. The costs order is not intended to be punishment against Dr. Ng but instead represents a fair allocation of the costs in this matter – it is appropriate to look to Dr. Ng to

fund some of the costs of the investigation and prosecution of this matter otherwise his peers, who had nothing to do with the misconduct, would bear the cost of the entire proceeding.

### **Decision on Penalty and Costs**

The Panel accepted the Joint Submission on Penalty and Costs and ordered as follows:

1. Dr. Ng is required to appear before the Discipline panel to receive a reprimand.
2. The Discipline Panel orders Dr. Ng. to pay the College's costs in the amount of \$5000 payable to the College of Optometrists within three (3) months of the date of the Order of a Panel of the Discipline Committee by post-dated cheque delivered to the Registrar on or before 22 June 2016.
3. The Discipline Panel orders that the Registrar be directed to suspend Dr. Ng's certificate of registration for a period of two months as set out in paragraph 3 of the Joint Submission on Penalty.
4. The Discipline Committee orders that the suspension be fully suspended if Dr. Ng successfully completes a period of coaching within five months of the date of the Order of the Discipline Committee. If Dr. Ng fails to successfully complete the practice coaching, he will serve the two months suspension beginning upon notification by the Registrar that Dr. Ng has failed to successfully complete the coaching.

The Panel found that the principles of public protection, specific deterrence, general deterrence, and remediation were all served by this order in all of the circumstances. The Panel does wish to reiterate to Dr. Ng a strong message that he should expect a much more severe penalty should he ever be found guilty of professional misconduct again.

At the conclusion of the hearing, Dr. Ng waived his right of appeal and the panel proceeded to administer the reprimand to him.

Dated this 23 day of June 2016 at Toronto, Ontario.

(Signed)

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Dr. Karin Simon, Chair



**TEXT of PUBLIC REPRIMAND**  
**Delivered on June 15, 2016**  
**In the case of the**  
**College of Optometrists of Ontario and Dr. Gordon Ng**

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 is disappointed to see you in front of a discipline panel again.

We are dismayed to see a serious deficiency in your practice despite the opportunity you were given for remediation. In the eyes of the public and your peers you have tarnished the reputation of optometrists in this province.

The public is not protected when patient and financial records fail to be maintained. This reflects poorly on you and the profession at large. Confidentiality of patient files is of utmost importance.

This panel's expectation is that you will participate in the coaching and successfully complete it. The panel suggests you hire a competent administrator to help you with organization.

We trust you will not appear before a discipline panel again. If you do find yourself in that position again, the penalty is likely to be more serious.

We trust you will take this experience seriously.