

NOTICE OF PUBLICATION BAN

In the *College of Optometrists of Ontario and Dr. Peter Spear*, this is notice that the Discipline committee has issued an order under subsection 45(3) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991, banning the publication, broadcasting or disclosure of the name of the patient and/or any information that would disclose the identity of the patient, including the name of her boyfriend, referred to during the hearing or in documents filed at the hearing.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

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

Panel: Dr. Karin Simon, Chair
Dr. Margaret Armstrong
Ms. Maureen Chesney
Dr. Dino Mastronardi
Mr. Brian Rivait

B E T W E E N:

The College of Optometrists of Ontario)	Ms. Bonni Ellis and Ms. Nadia Marotta
)	Counsel for the College
)	of Optometrists of Ontario
)	
- and -)	
)	
)	
Dr. Peter Spear)	Mr. Brian Greenspan and Ms. Naomi Lutes
)	Counsel for Dr. Peter Spear
)	
)	
)	Ms. Julie Maciura
)	Independent Legal Counsel
)	
)	Heard on March 27, 2017

DECISION AND REASONS

This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario at 9:30 a.m. on March 27, 2017, in Toronto, Ontario, at Victory Verbatim, 222 Bay Street, Suite 900.

The purpose of the hearing was to consider allegations of professional misconduct referred by the Inquiries, Complaints and Reports Committee against Dr. Peter Spear.

In attendance were Dr. Peter Spear; Mr. Brian Greenspan and Ms. Naomi Lutes, counsel for Dr. Spear; Ms. Bonni Ellis and Ms. Nadia Marotta, counsel for the College, accompanied by Dr.

Paula Garshowitz, Registrar; and Ms. Julie Maciura, independent legal counsel to the Discipline Panel.

The hearing was called to order at 9:30 a.m. and the Chair introduced the Panel and the other participants.

Publication Ban

At the request of the College and on consent of Dr. Spear, the Panel made an order banning the publication, broadcasting or disclosure of the name of the patient and/or any information that would disclose the identity of the patient, including the name of her boyfriend, referred to during the hearing or in documents filed at the hearing.

The Panel's reasons for making the publication ban are that personal health information or other matters may be disclosed at the hearing which are of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public.

Allegations and Evidence

Ms. Ellis filed the Notice of Hearing as Exhibit 1. The Notice of Hearing alleged that Dr. Spear:

1. committed an act or acts of professional misconduct as provided by subsection 51(1)(b.1) of the *Health Professions Procedural Code* of the *Optometry Act, 1991*, S.O. 1991, c. 35, as amended, in that, you sexually abused Patient A when you engaged in behaviour and/or made remarks of a sexual nature towards her; and
2. committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Optometry Act, 1991*, S.O. 1991, c. 35, as amended, and defined in paragraph 1.39 of Ontario Regulation 119/94 in that, you engaged in conduct or performed an act(s) that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.

The Notice of Hearing also set out, in Schedule "A", particulars of conduct in which Dr. Spear was alleged to have engaged and which allegedly constituted the two grounds of professional misconduct.

Ms. Ellis informed the panel that Dr. Spear would be admitting to facts and making admissions set out in an Agreed Statement of Facts and Partial Admission. That document was filed as Exhibit 2.

Agreed Statement of Facts and Partial Admissions

The Agreed Statement of Facts and Partial Admissions stated that:

“THE MEMBER

1. Dr. Peter A. Spear, OD (“the Member”) has been registered with the College of Optometrists of Ontario (“the College”) in the general class since July 14, 1986, after receiving his Optometry degree from the Southern College of Optometry in Tennessee earlier that year.
2. The Member practises at the Toronto Eye Clinic (“the Clinic”), which he opened approximately 30 years ago.
3. At the time of the events at issue in this matter, the Member was a member in good standing at the College and was subject to the jurisdiction of the College.
4. The Member has no prior discipline history with the College.

THE APPOINTMENT

5. A female patient (“the Patient”) attended the Clinic for an appointment with the Member on July 15, 2015. This was the Patient’s second appointment at the Clinic, after her first attendance on October 18, 2013 with another optometrist.
6. The Patient was 25-years-old at the time of her July 2015 appointment with the Member, which she scheduled to address concerns of red eyes and a “circle” in her left eye.
7. The appointment proceeded in two stages, separated by the administration of drops to dilate her pupils. During the first stage of the appointment, the Patient was initially alone in an examination room with the Member.

A. Stage I of the Appointment

8. During the first stage of her appointment, the Member asked the Patient various questions and made various comments regarding her personal life, including the following:
 - a. the Member asked the Patient if her parents supported her financially during her studies;
 - b. the Member made a comment to the Patient regarding her termination from a previous job, which suggested that the termination was her fault; and

- c. the Member asked what her relationship was like with her sister.
9. If the Patient were to testify, the Patient would acknowledge that it can be helpful for an optometrist to get to know his or her patient. However, she would say that she felt the Members questions were inordinate, too personal, felt inquisitorial, and crossed the line.
 10. If the Member were to testify, he would say that his intention in posing personal questions to the Patient was to get to know her and to make her feel more comfortable.
 11. During this first stage of the appointment, the Member also looked the Patient up and down and commented on her beauty. According to the Patient, the Member's gaze also fell to the Patient's breasts. If the Patient were to testify, she would say that she interpreted the Member's comments, together with the manner in which he looked at her as sexual and this made her feel extremely uncomfortable.
 12. If the Member were to testify, the Member would say that the intent behind his comments or behaviours towards the Patient was not sexual. The Member would further say that he does not recall looking at the Patient's breasts. However, the Member would acknowledge that when his gaze unintentionally falls to the area of a patient's breast he makes every effort to regain eye contact. The Member would further acknowledge that, although he has no recollection of this, his gaze may have dropped to the Patient's breasts and that this would reasonably have contributed to her perception of the Member's behaviour and comments.
 13. When the Member went to conduct a slit lamp examination on the Patient, he advised her that she could uncross her legs. According to the Patient, the Member said "I'm not looking", or words to that effect, in the context of making this request while putting up his hand in a motion to suggest that he was shielding his eye. If the Patient were to testify, she would say that she found the comment to be inappropriate, offensive and unprofessional. The Patient would testify that, in the context of the Member's earlier comments, she perceived his comment and gesture to be sexual in nature.
 14. If the Member were to testify, the Member would say that he required the Patient to uncross her legs to perform the slit lamp examination, and the manner in which he made the request was an attempt at light-hearted humour.
 15. During the first stage of the Patient's appointment the Member told the Patient that he would love to pick her brain over coffee. Shortly after this, the Member's cell phone rang and he answered the call, which was personal in nature. If the Patient were to testify, she would say that she found this to be unprofessional and disrespectful of her time.
 16. Following the Member's personal call, a male intern ("Intern A") entered the room. The Member commented to Intern A regarding the Patient's beauty and stated "if only I was

younger”. The Member commented on the Patient’s beauty in the presence of Intern A on more than one occasion. If the Patient were to testify she would say she found this to be highly inappropriate and it made her feel uncomfortable. If the Member were to testify, he would say that his only intention was to compliment the Patient.

17. According to the Patient, the Member’s eyes diverted to the Patient’s breasts once again during the first stage of the appointment, at which point the Member stated “I find my eyes traveling, I have to divert my gaze”. If Intern A were to testify, he would say that he did not see the Member looking at the Patient’s breasts but heard the Member say “I find my eyes traveling, I have to divert my gaze”, or words to that effect. If the Member were to testify, the Member would say that he does not recall this occurring, but acknowledges that it may have.
18. The Patient then went to the waiting area of the Clinic while the dilating drops took effect. The Patient’s boyfriend, (“Mr. A”), met her at the Clinic during this time, as they had previously arranged. The Patient hoped that the Member’s behaviour and comments would cease once he realized that her boyfriend was at the Clinic.
19. When the Patient introduced Mr. A to the Member, the Member made comments to Mr. A regarding the Patient’s beauty. Specifically, the Member stated that the Patient was beautiful and “not just from the neck up” and made a comment to Mr. A to the effect of “You are a very lucky man. You hit the jackpot”. The Member also told Mr. A that “he should put a ring on it before somebody snatches her up”, or words to that effect.
20. If Mr. A were to testify, he would say that the Patient appeared flustered and uncomfortable when he arrived at the Clinic, although she did not provide him with any further details of her interaction with the Member at that time. Mr. A would further state that he found the Member’s comments to him about the Patient to be inappropriate.
21. If the Member were to testify he would say that his comments to Mr. A about the Patient’s beauty demonstrate that his comments to and about the Patient were not intended to be sexual in nature and, instead, were intended to be complimentary.

B. Stage II of the Appointment

22. During the second stage of the Patient’s appointment a second intern (“Intern B”) entered the examination room.
23. The Member also made a comment to the Patient regarding an article that he had recently read about men’s beards. The Member told the Patient that the article stated men’s beards are full of feces. The Member commented further that men touch their crotch area and then their beards and then said that the Patient should think about this when she thinks about her boyfriend, Mr. A, who the Member had just met, had a beard at that time.

24. The Member proceeded to take two more personal calls during the second stage of the Patient's appointment. If the Patient were to testify, the Patient would say that the first call during the first stage of her appointment was about a carpet, the second call about a motorcycle and the third call about dinner plans. If the Member were to testify, the Member would say that he recalls there being only two calls and that they were about an upcoming vacation. However, the Member acknowledges that he answered personal calls on his cell phone during the Patient's appointment.
25. If the Patient were to testify, the Patient would say that she found the Member's conduct throughout her appointment to be highly unprofessional and that she was shocked that a healthcare professional with the title "Dr." would conduct himself in this manner. The Patient would further state that the Member's conduct made her extremely uncomfortable, to the point that she did not know how to react. The Patient would say that she was shaken after she left the Member's office and was on the verge of tears when she started to digest and communicate what had occurred.

THE MEMBER'S RESPONSE TO THE ICRC

26. As part of the investigation process, the Member was interviewed by the investigator appointed by the College for this matter. The Member also provided a written response to the Inquiries, Complaints and Reports Committee, which he prepared without the assistance of counsel (together, "His Response").
27. In His Response, the Member admitted to most of the conduct attributed to him. However, the Member admits that His Response was defensive and he failed to acknowledge that most of his conduct was inappropriate or problematic. The Member further acknowledges that he suggested in His Response that the problem lay with the Patient, who lacked a sense of humour and/or was uptight.

ADMISSIONS

28. The Member admits to the truth of the facts referred to in paragraphs 1 – 27 above (the "Agreed Facts").
29. The Member acknowledges that the Agreed Facts constitute conduct which is professional misconduct as defined in subsection 51(1) of the *Health Professions Procedural Code* of the *Optometry Act, 1991*, S.O. 1991, c. 35.
30. Specifically, the Member admits, with the benefit of hindsight and reflection, that although he did not intend for his comments or behaviour to be sexual in nature, they are appropriately viewed as such when considered objectively and as a whole, in all of the circumstances.

31. The Member also admits that he engaged in behaviour and/or made remarks of a sexual nature towards the Patient during her appointment on July 15, 2015, as described above. Specifically, the Member admits that he:

- a. stated “I’m not looking”, or words to that effect, in the context of telling the Patient to uncross her legs;
- b. commented on the Patient’s beauty to an intern in the presence of the Patient;
- c. remarked to the Patient or in her presence:
 - i. “if only I was younger”, or used words to that effect;
- d. commented to Mr. A, in the Patient’s presence:
 - i. “You are a very lucky man. You hit the jackpot”; and
 - ii. “she is a beautiful woman and not just from the neck up”; and/or
 - iii. “you should put a ring on it before somebody snatches her up”;

or used words to that effect;

32. The Member further admits that, in so doing, he engaged in professional misconduct as set out in paragraph one (1) of the Notice of Hearing by sexually abusing the Patient, as that term is defined in subsection 51(1)(b.1) of the *Health Professions Procedural Code of the Optometry Act, 1991*, S.O. 1991, c. 35.

33. The Member also specifically admits that he engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members, as dishonourable and unprofessional when he:

- a. posed inappropriate personal questions to the Patient and/or made inappropriate comments to and/or about the Patient in her presence, including when he:
 - i. asked whether her parents had supported her financially during her studies;
 - ii. suggested that it was her fault for being terminated from a previous job; and/or
 - iii. asked about her relationship with her sister;

- b. invited her to go for coffee;
 - c. answered personal calls on his cell phone during the Patient's appointment; and
 - d. commented to the Patient:
 - i. that he had read a report about men's beards being full of feces; and
 - ii. that men touch their crotch area then touch their beards and that she should think of that when she thinks of Mr. A, or used words to that effect.
34. The Member further admits that, in so doing, he engaged in professional misconduct as, as defined in paragraph 1.39 of Ontario Regulation 119/94 under the *Optometry Act, 1991*, S.O. 1991, c. 35.
35. If the Member were to testify, the Member would say that he has recently come to the realization that his conduct on July 15, 2015 was inappropriate. He is extremely remorseful for the behaviour and comments described above and any discomfort he caused the Patient and/or Mr. A. The Member would also state that he regrets the negative perception he created of himself and the profession.
36. By this document, the Member confirms that:
- a. He understands fully the nature of the allegations against him;
 - b. He has no questions with respect to the allegations against him;
 - c. He understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to a panel of the Discipline Committee;
 - d. He understands that by admitting to the allegations, he is waiving his right to require the College to prove the case against him in a contested hearing;
 - e. He understands that depending on the Panel's Order, its decision and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication or website of the College;
 - f. He understands that any agreement between him and the College with respect to the proposed Order does not bind the Panel; and

- g. He understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has obtained legal advice from Brian Greenspan and Naomi Lutes, of Greenspan, Humphrey Weinstein.

REMAINING ALLEGATIONS

37. The College seeks leave of the Panel to withdraw allegations 1(a)(ii), 1(d)(ii), 1(d)(iii), 2(b)(iii), 2(c), and 2(e), and the words “disgraceful” and “unethical” with respect to allegation 2, as set out in the Notice of Hearing.

38. The Parties will make submissions to the Panel with respect the Member’s Plea to allegations 1(a)(i) and 2(a). However, the Parties are in agreement that the facts set out in this document are sufficient for the Panel to make findings in relation to these allegations.”

Dr. Spear then pled guilty to the facts set out in the Agreed Statement of Facts and Partial Admissions.

After reviewing the Agreed Statement of Facts and Partial Admissions with the Panel, Ms. Ellis asked the Panel to find Dr. Spear guilty of professional misconduct.

Counsel for Dr. Spear agreed that the conduct described in the Agreed Statement of Facts constitutes professional misconduct and further invited the panel to also make findings with respect to allegations 1(a)(i) and 2(a), on which Dr. Spear did not make clear admissions.

Finding on Misconduct

The Panel agreed to the withdrawal of the particulars alleged in paragraphs 1(a)(ii), 1(d)(ii), 1(d)(iii), 2(b)(iii), 2(c), and 2(e) of Schedule “A” to the Notice of Hearing, and to the withdrawal of the words “disgraceful” and “unethical” with respect to allegation 2, as set out in the Notice of Hearing.

After deliberation, the Panel found that the facts set out in the Agreed Statement of Facts and Partial Admissions established that Dr. Spear was guilty of professional misconduct as set out in paragraphs 1(a)(i), 1(b), 1(c), 1(d)(i), 1(e)(i), 1(e)(ii), 1(e)(iii), 2(a), 2(b)(i), 2(b)(ii), 2(b)(iv), 2(d), 2(f), 2(g)(i) and 2(g)(ii) of Schedule “A” to the Notice of Hearing.

As a result, the Panel found Dr. Spear guilty of professional misconduct pursuant to subsection 51(b.1) of the *Health Profession Procedural Code of the Optometry Act, 1991, S.O. 1991, c. 35*, as amended, by sexually abusing Patient A when he engaged in behaviour and/or remarks of a

sexual nature towards her and further found Dr. Spear guilty of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Optometry Act, 1991*, S.O. 199, c. 35, as amended, and defined in paragraph 1.39 of Ontario Regulation 119/94 by engaging in conduct or performing an act that, having regard to all of the circumstances, would reasonably be regarded by members as dishonourable and unprofessional.

Reasons for Finding on Misconduct

Dr. Spear was alleged to have sexually abused a patient he examined at his clinic on July 15, 2015. The patient reported his making comments of a sexual and personal nature and behaving inappropriately. She expressed extreme discomfort and interpreted his comments and behavior as inappropriate, offensive and unprofessional.

The Panel heard submissions from Ms. Bonni Ellis, counsel for the College and Mr. Brian Greenspan, counsel for the member.

The Panel unanimously determined the comments and behavior did occur as supported by Dr. Spear's admission to the truth of the facts cited in the Agreed Statement of Facts and Partial Admissions. Dr. Spear acknowledged that the facts constitute professional misconduct as defined in subsection 51(1)(b.1) of the *Health Profession Procedural Code of the Optometry Act, 1991*, S.O. 1991, c.35 and as defined in paragraph 1.39 of Ontario Regulation 119/94 as conduct that would reasonably be regarded by members of the profession as dishonourable and unprofessional.

The Panel also found Dr. Spear to be guilty with respect to the two allegations in Schedule "A" to the Notice of Hearing, paragraphs (1)(a)(i) and 2(a), to which Dr. Spear had not specifically entered a plea. Both referenced comments were supported by witnesses and as such those allegations were proven on a balance of probabilities.

Joint Submission on Order and Costs

The parties jointly asked the panel to make an order that included a reprimand; a five week suspension; terms, conditions and limitations; and reimbursement to the College of partial costs in the matter in the amount of \$68,000.00

Ms. Ellis made submissions about why the Joint Submission on Order and Costs was appropriate in the circumstances of this case. She submitted that the Panel should consider the following factors:

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.

Ms. Ellis made submissions regarding how the proposed penalty in the Joint Submission on Order and Costs would satisfy the above factors:

Ms. Ellis then pointed out a number of mitigating factors including the fact that this was Dr. Spear's first time at discipline, that he pled guilty and saved the College considerable time and resources.

Ms. Ellis provided cases from previous tribunals that in her submission involved similar conduct that resulted in penalties within the range of what was being sought here.

Ms. Ellis also submitted that the Panel should not vary the Joint Submission on Order and Costs unless the proposed penalty was so far outside the range of appropriate penalties that it would create a miscarriage of justice.

Counsel for Dr. Spear asked the Panel to accept the Joint Submission and while submitting that it was onerous to Dr. Spear and at the high end of the range of appropriate penalties, it should be accepted by the panel for the reasons set out by Ms. Ellis.

Penalty and Costs Decision

Having considered the findings of professional misconduct, the relevant evidence and the submissions of the parties, the Panel accepted the Joint Submission on Order and Costs and made the following order:

1. Requiring the Member to appear before the Panel to be reprimanded at the conclusion of the hearing on March 27, 2017.
2. Directing the Registrar to suspend the Member's certificate of registration for five (5) weeks uninterrupted, commencing on May 1, 2017.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. that the Member successfully complete, at his own expense, with an unconditional pass, and within two (2) years of the date that this Order becomes final, both the ProBe Program on professional/problem-based ethics offered in Ontario and the ProBe Plus follow-up module; and

- b. that the Member shall, within ninety (90) days of the date of this Order, provide proof, acceptable to the Registrar, that he has paid the sum of \$16,060 to the law firm of his lawyer, Greenspan Humphrey Weinstein (“the Firm”), in trust, and instructed his lawyer that the funds shall remain in the Firm’s trust account and shall not be disbursed until:
 - i. the College has requested the funds, or a portion thereof, for the purpose of funding provided for the patient under the program required by s. 85.7 of the *Health Professions Procedural Code*; or
 - ii. the expiration of the 5-year time frame within which funding may be provided for a person in respect of a case of sexual abuse, as set out in O.Reg 599/94 under the *Regulated Health Professions Act, 2001*. S.O. 1991, c. 18, at which time the funds shall be released to the Member

whichever occurs sooner.

- 4. Directing the Member to partially reimburse the College for its costs in relation to this proceeding in the amount of \$68,000 to be paid according to the following schedule:
 - a. one cheque dated March 27, 2017 in the amount of \$5,666.74; and
 - b. eleven (11) post-dated cheques, dated for the 27th of each month, commencing April 27, 2017, each in the amount of \$5,666.66.

Reasons for Penalty and Costs Order

The Panel heard submissions from counsel for the College and counsel for the member as to why the Penalty was appropriate in the circumstances of this case.

In considering the jointly proposed Penalty, the Panel was mindful of judicial direction that a penalty jointly proposed should be accepted unless its acceptance would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Mitigating factors included an admission of guilt by Dr. Spear. He entered into an Agreed Statement of Facts and Partial Admissions and Joint Submission on Order and Costs and by doing so gave up his right to a full hearing, sparing the College a lengthy and costly hearing.

In addition, Dr. Spear waived his right to appeal and accepted the public reprimand that will be part of the public portion of the Register and part of his record with the College. The reprimand included that his professional behavior and comments eroded public confidence and brought the profession into disrepute.

The Panel is confident that the orders of Penalty against Dr. Spear will act as a specific deterrent to repetition of his behavior and actions in his professional capacity. The penalty includes a five (5) week suspension, a College approved remediation course involving re-education and rehabilitation, obligation to contribute to the College's significant costs arising from the Discipline process, and a reprimand that will be part of the public portion of the Register and part of his record with the College. The Panel was satisfied that this will serve as a deterrent to other members of the profession from engaging in similar behaviour and as such will ensure public protection.

In considering the seriousness of this case, the Panel determined the penalty was fair and reasonable, being neither too lenient nor too onerous.

At the conclusion of the hearing, Dr. Spear waived his right of appeal and the Panel administered the reprimand.

Dated this 13 day of April, 2017, at Toronto, Ontario.

(Signed)

Dr. Karin Simon, Chair

TEXT of PUBLIC REPRIMAND**Delivered on March 27, 2017****College of Optometrists of Ontario and Dr. Peter Spear**

As part of its penalty order, this Discipline Panel has ordered that you receive a Reprimand. 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. We view this case involving sexual abuse as serious. We are concerned, that as a practitioner, you failed to provide an environment where your patient felt safe and comfortable. You displayed a lack of sensitivity in your language and behaviour and failed to understand the impact of this on your patient and potentially even on those interns under your supervision. As an Optometrist, it is important for you to appreciate your fiduciary responsibility and position of power over patients. We trust you will take seriously the panel's comments today and that you will take advantage of the rehabilitation process to which you have agreed and that the panel has ordered.

Your behaviour in this case brings the profession of Optometry into disrepute and erodes public trust.

We expect you to comply with the entire order including the terms, conditions and limitations imposed. We expect as a result of this hearing and its outcomes, that your professional interactions and understanding of boundaries will be reformed.