

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

Panel: Mr. John Van Bastelaar, Chair  
Dr. Patricia Hrynychak  
Ms. Ellen Pekilis

Public Member  
Member of Council  
Public Member

**BETWEEN:**

The College of Optometrists  
of Ontario

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

- and -

Dr. Bassam Aabed

Ms. Rebecca Young  
Counsel for Dr. Bassam Aabed

Ms. Julie Maciura  
Independent Legal Counsel

**Heard on May 9, 2017**

## DECISION AND REASONS

This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario on May 9, 2017, in Toronto, Ontario, at 65 St. Clair Avenue East, Suite 900.

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

In attendance were Dr. Bassam Aabed, Ms. Rebecca Young, counsel for Dr. Aabed; Ms. Julia Martin, 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 1:40 p.m. and the Chair introduced the Panel and the other participants.

## **Allegations and Evidence**

Ms. Martin filed the Notice of Hearing as Exhibit 1. The Notice of Hearing alleged that Dr. Aabed:

1. committed an act or acts of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18 in that you were found guilty of an offence that is relevant to your suitability to practise optometry, and
2. committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18, and defined in paragraph 1.39 of Ontario Regulation 119/94 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.

The following are the particulars:

1. On or about August 31, 2015, you were convicted of the following criminal offences in Ottawa, Ontario, for conduct that occurred on or about November 4, 2013:
  - a. Subsection 254(5) of the *Criminal Code of Canada* contrary to subsection 255(1) of the *Criminal Code of Canada* for, without reasonable excuse, failing or refusing to comply with a demand made to him by a police officer to provide such a sample of breath as was necessary to enable a proper analysis to be made by means of an approved screening device;
  - b. Subsection 88(2) of the *Criminal Code of Canada* for possessing a weapon dangerous to the public peace, namely a stun gun; and
  - c. Subsection 90(2) of the *Criminal Code of Canada* for carrying a concealed weapon, namely a stun gun.

Ms. Martin informed the panel that Dr. Aabed would be admitting to facts and making admissions set out in an Agreed Statement of Facts, which was filed as Exhibit 2.

## **Agreed Statement of Facts**

The Agreed Statement of Facts stated that:

1. Dr. Bassam Aabed hereby pleads guilty to the allegations contained in the Notice of Hearing dated September 27, 2016, which is attached as Schedule "A" to the Agreed Statement of Facts.

2. Dr. Aabed is an optometrist who practised at the relevant times in Ottawa.
3. On August 31, 2015, Dr. Aabed was convicted of the following criminal offences in Ottawa, for conduct that occurred on November 4, 2013:
  - a. Subsection 254(5) of the *Criminal Code of Canada* contrary to subsection 255(1) of the *Criminal Code of Canada* for, without reasonable excuse, failing or refusing to comply with a demand made to him by a police officer to provide such a sample of breath as was necessary to enable a proper analysis to be made by means of an approved screening device;
  - b. Subsection 88(2) of the *Criminal Code of Canada* for possessing a weapon dangerous to the public peace, namely a stun gun; and
  - c. Subsection 90(2) of the *Criminal Code of Canada* for carrying a concealed weapon, namely a stun gun.
4. Attached as Schedules “B” and “C” to the Agreed Statement of Facts are the Certificate of Conviction dated November 23, 2016, and the Reasons for Decision of his Honour Jack Nadelle dated August 31, 2015, respectively.
5. Dr. Aabed therefore admits that he committed acts of professional misconduct for having been found guilty of offences relevant to his suitability to practise optometry as provided by subsection 51(1)(a) of the *Health Professions Procedural Code*, (the “Code”) being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18.
6. Dr. Aabed further admits, with regard to the conduct resulting in these criminal convictions, that he engaged in conduct or performed acts which would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical and that this constitutes professional misconduct as defined in paragraph 39 of subsection 1(1) of Ontario Regulation 859/93, as amended, made under the *Optometry Act*, 1991, S.O. 1991, c. 35, and as provided by paragraph 51(1)(c) of the Code.

The Agreed Statement of Facts was signed by Dr. Aabed and by the Registrar of the College. Dr. Aabed also orally admitted to the allegations in the Notice of Hearing and his counsel submitted that he did so freely and voluntarily.

### **Submissions on Finding**

College counsel summarized the circumstances of Dr. Aabed’s arrest and conviction as set out in the transcript of his court appearance of August 31, 2015, which included Dr. Aabed being caught up in an undercover police sting operation called a “John sweep” set up in a known area of prostitution.

After propositioning a female undercover police officer, Dr. Aabed was arrested by police for communication for the purpose of prostitution and for mischief. At this time Dr. Aabed told the police that he was just parked in his car and that he was not driving because he was drunk. Dr. Aabed was not cooperative with the police and initially refused to leave his car.

After eventually removing him from his car and placing him in a police car, the police moved Dr. Aabed's car, for safety reasons, to a parking lot. Dr. Aabed's car contained a plastic water bottle containing rum, a blue plastic cup with rum and coke and two opened and seven unopened cans of beer.

Dr. Aabed was transferred to another officer. While communicating with Dr. Aabed in order to caution him and advise him of his right to counsel, the officer noted a strong odour of alcohol coming from Dr. Aabed's breath. He demanded a breath sample but Dr. Aabed refused to give it. Dr. Aabed was not cooperative with the police and initially refused to leave his car.

Dr. Aabed then told the police officer that he was an optometrist and that he needed a briefcase out of his car because it had money in it and material he needed for work purposes. His briefcase was retrieved and Dr. Aabed was taken to the police station. His briefcase was taken to the property room where upon opening it the officer found a Taser, or stun gun.

Dr. Aabed pled not guilty to the charges against him, but his explanation for his conduct was dismissed by the court as lacking any semblance of credibility.

College counsel submitted that the conviction against Dr. Aabed was relevant to his suitability to practise in that as a regulated professional he is obliged to comply with various pieces of legislation, regulations and bylaws and so when he refused to give a breath sample, that demonstrated a lack of respect for the law and a lack of judgment on his part. Dr. Aabed himself made the connection between his briefcase and his optometry practice, and the briefcase contained a dangerous weapon.

Additionally, being convicted of the offences is unprofessional. The same arguments that relate to his suitability to practise apply to the second allegation of disgraceful, dishonourable, unprofessional or unethical conduct.

College counsel submitted that the College had proven its case on a balance of probabilities and that it was more likely than not that the alleged conduct occurred and further submitted that the conduct constitutes professional misconduct.

Counsel for Dr. Aabed agreed that the conduct described in the Agreed Statement of Facts constitutes professional misconduct.

## **Finding on Misconduct**

After deliberation, the Panel found that the facts set out in the Agreed Statement of Facts established that Dr. Aabed was guilty of professional misconduct as set out in paragraphs 1 and 2 of the Notice of Hearing, as follows:

1. That Dr. Aabed is guilty of professional misconduct for having committed acts of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18 in that he was found guilty of offences that are relevant to his suitability to practise optometry.
2. That Dr. Aabed is guilty of professional misconduct for having committed acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18, and defined in paragraph 1.39 of Ontario Regulation 119/94 in that he 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.

## **Reasons for Finding on Misconduct**

Dr. Aabed was alleged to have been convicted of failing to comply with the demand of a police officer to provide a breathalyzer sample. He was further alleged to have been convicted of possessing a weapon dangerous to the public peace and for carrying a concealed weapon.

Dr. Aabed was present and confirmed that he admitted to the facts and was pleading guilty.

The Panel found that the College had met the burden of proof in this matter. The Panel unanimously determined the comments and behavior did occur as supported by Dr. Aabed's admission to the truth of the facts cited in the Agreed Statement of Facts (and schedules attached thereto). Dr. Aabed acknowledged that the facts constitute professional misconduct as defined in subsection 51(1)(a) and 51(1)(c) of the *Health Profession Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18, 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 disgraceful, dishonourable, unprofessional or unethical. Refusing to comply with the law and the weapons offence would reasonably be viewed by the members in that way.

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

The Parties jointly asked the Panel to make an order with respect to penalty and costs as follows:

1. A reprimand;

2. The payment of the College's costs of \$10,000 to be paid within 10 months of the date of the Order of the Discipline Committee. Dr. Aabed shall pay the costs in 10 monthly installments of \$1,000 with the first cheque to be dated the same day as the Order of the Discipline Committee and the remaining 9 dated monthly thereafter. Dr. Aabed shall provide the Registrar with post-dated cheques for the full amount of the costs, at the hearing.
3. A two-month suspension of Dr. Aabed's certificate of registration to commence within 30 days of the date of the Order of the Discipline Committee.
4. The imposition of a condition on Dr. Aabed's certificate of registration that he complete the ProBE Ethics and Boundaries Program at his own expense and attain an "unconditional pass", prior to December 31, 2017.

Ms. Martin made submissions about why the Joint Submission on Penalty was appropriate in the circumstances of this case. She reminded the Panel of the principles that they should consider in this case, including:

1. Public protection;
2. The specific deterrence of the member from engaging in such conduct again;
3. General deterrence to ensure that other members of the profession will not engage in conduct of this nature; and
4. Rehabilitation of the member

In Ms. Martin's submission the jointly proposed penalty achieved those goals; more particularly, the suspension and the costs met the goals of specific and general deterrence. These are serious sanctions and would bring home the message to Dr. Aabed and to the rest of the profession that this type of conduct would not be tolerated by the College. The principle of rehabilitation would be met by the PROBe ethics course, which Dr. Aabed is required to successfully complete at his own expense before the end of the calendar year.

College counsel submitted that the proposed penalty also took into account the aggravating and mitigating factors in the case. The aggravating factors were the seriousness of the conduct, the fact that the conduct was criminal and the conduct put the public at risk. Failing to provide a breath sample demonstrates disrespect for the law. On the other hand, the mitigating factors include that Dr. Aabed cooperated with the College and pled guilty thereby saving the time and effort that would be involved in a contested hearing. Additionally, he has no previous convictions and has already been through the criminal process; Dr. Aabed has a criminal record now and has been sentenced.

Counsel provided a number of cases from other regulators that showed the range of penalties that this type of conduct had been met with in the past, taking into consideration the different mitigating and aggravating factors unique to each of those cases.

Finally, College counsel reminded the Panel of the law relating to joint submissions, which is that the Panel is bound to accept the joint submission unless it is so unreasonable that its acceptance would bring the administration of the discipline process into disrepute and be contrary to the public interest, which is a very high test.

Counsel for Dr. Aabed echoed College counsel's submissions and asked the Panel to accept the Joint Submission on Penalty. She provided some background information about Dr. Aabed, including the fact that he is married with three children. She reviewed his efforts to become registered as an optometrist in Canada and reminded the Panel that the events in question occurred almost four years ago, during a tumultuous time in his life. She agreed that the conduct touched on his suitability to practise the profession but submitted that there was no evidence that any of the conduct actually took place during the practice of optometry. She submitted that Dr. Aabed has faced harsh and public embarrassment and the facts of his arrest were widely circulated in the media.

Defence counsel further submitted that Dr. Aabed has ongoing family and community support as demonstrated by 12 letters of reference from family, colleagues and at least one patient that were submitted on his behalf and marked as Exhibit 4. Those letters consistently suggested that the conduct was out of character for Dr. Aabed.

Counsel for Dr. Aabed concluded her submissions by advising the Panel that Dr. Aabed successfully completed his period of probation without any problems and repeated her request that the Panel impose the jointly proposed penalty.

### **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 Penalty and made the following order:

1. Requiring Dr. Aabed to appear before the Panel to be reprimanded.
2. Directing the Registrar to suspend Dr. Aabed's certificate of registration for a period of two months to commence within 30 days of the date of the Order of the Discipline Committee.
3. Directing the Registrar to impose the following specified terms, conditions and limitations on Dr. Aabed's certificate of registration:
  - a. that Dr. Aabed complete the ProBE Ethics and Boundaries Program at his own expense; and attain an "unconditional pass", prior to December 31, 2017.

4. Directing Dr. Aabed to pay the College's legal costs and expenses of \$10,000 to be paid within 10 months of the date of the Order of the Discipline Committee as follows:
  - a. Dr. Aabed shall pay ten monthly installments of \$1,000 with the first cheque to be dated the same day as the Order of the Discipline Committee and the remaining nine cheques dated monthly thereafter; and
  - b. Dr. Aabed shall provide the Registrar with post-dated cheques for the full amount at the hearing.

### **Reasons for Penalty and Costs Order**

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

Upon reviewing the joint penalty submission against examples submitted by counsel of disciplinary penalties imposed in other cases, the Panel concluded that the joint penalty was within the range of penalties assessed in other disciplinary situations with similar seriousness of conduct, taking into account both the aggravating and mitigating factors.

Further, the Panel considered the four factors put forward by Counsel for the College in light of the joint penalty submission and the particular circumstances of this situation. Rehabilitation of the member is addressed through the program that Dr. Aabed must take, at which he must achieve an unconditional pass. Public protection is addressed through the combination of the rehabilitative course and the suspension. Deterrence of both the specific member and the profession at large will be addressed by a combination of all of these elements of the penalty, coupled with a costs award of \$10,000.

The Panel concluded that, taking into account the overall goal of public safety, the seriousness of the conduct in this situation and the aggravating and mitigation factors, the penalty was fair and reasonable and would not bring the administration of justice into disrepute.

At the conclusion of the hearing, Dr. Aabed waived his right to appeal. The Panel administered the reprimand to Dr. Aabed at that time.

Dated this 25 day of May, 2017, at Port Elgin, Ontario.

(Signed)

---

Mr. John Van Bastelaar, Chair



**TEXT of PUBLIC REPRIMAND**  
**Delivered on May 9, 2017**

**College of Optometrists of Ontario and Dr. Bassam Aabed**

Dr. Aabed, the Panel wishes to express to you its dismay with respect to your behaviour.

The Panel finds that your behaviour tarnished your reputation, as well as the reputation of all Optometrists.

Your conduct shows a disrespect for the law. As a regulated member of the profession you are required to comply with the governing legislation; you are obliged to comply with statutes, regulations and bylaws. However, your conduct showed that you were prepared to disregard the law and the particular laws that you disregarded are ones that are intended to protect the public.

Your conduct demonstrates a serious lack of professional judgment and a violation of the trust placed in you by your colleagues and your community.

The Panel recognizes that you have cooperated with the College and pled guilty, thereby saving considerable time and resources. We also recognize that this is your first time at discipline and that you have also served a serious criminal penalty including and that you have successfully completed your probationary period.

We also recognize that you have provided numerous letters of reference on your behalf and that family, friends and colleagues still support you and felt that your conduct was out of character.

We hope that they are right and that this was a one-time event in your life. We hope that you use this as an opportunity to reflect on your conduct and to ensure that you do not find yourself before the Discipline Committee in the future, because if you do you should be aware that the penalty that is likely to be ordered at that time will be much more onerous.

Thank you – the hearing is now adjourned.