

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

Panel: Ms. Ellen Pekilis, Chair
Dr. Patricia Hrynchak
Mr. Bashar Kassir
Mr. Hsien Ping (Albert) Liang
Dr. Kamy Morcos

B E T W E E N:

The College of Optometrists)	Ms. Julia Martin
of Ontario)	Counsel for the College
)	of Optometrists of Ontario
)	
- and -)	
)	
)	
Dr. Gordon Ng)	Mr. Syed Abid Hussain
)	Counsel for Dr. Gordon Ng
)	
)	
)	Ms. Julie Maciura
)	Independent Legal Counsel
)	
)	Heard on February 6, 2018

DECISION AND REASONS

This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario (the “College”) on February 6, 2018, at the College of Optometrists of Ontario, 65 St. Clair Ave. East, Suite 900, Toronto, Ontario.

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

The five members of the Discipline Panel referred to above were in attendance, as well as Dr. Gordon Ng and his counsel, Mr. Syed Abid Hussain; 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 9:40 a.m. The Chair introduced the Panel and the other people present in the room.

Allegations and Evidence

College Counsel took the Panel through the Notice of Hearing, which was filed as Exhibit 1.

The Notice of Hearing alleged that:

1. You 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 on or about February 26, 2016, you were found guilty of an offence that is relevant to your suitability to practise optometry as set out in the particulars which are contained at Appendix “A” to the Notice of Hearing;
2. You have 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 paragraphs 1.28 of Ontario Regulation 119/94 in that you submitted or allowed to be submitted an account for professional services that you knew or ought to have known is false or misleading as set out in the particulars which are contained at Appendix “A” to the Notice of Hearing;
3. You have 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 paragraphs 1.24 of Ontario Regulation 119/94 in that you failed to make or maintain the records required by Part IV of the Regulation as set out in the particulars which are contained at Appendix “A” to the Notice of Hearing; and
4. You have 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 paragraphs 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 as set out in the particulars which are contained at Appendix “A” to the Notice of Hearing.

Appendix “A”

1. Dr. Gordon Ng is an optometrist who has practised in Toronto, Ontario since in or about January 15, 1991.

Patient AG

2. On or about February 26, 2016, Dr. Ng pleaded guilty and was found guilty of two counts of knowingly giving false information in an application, return or statement made to the Ontario Health Insurance Plan or the General Manager for the Plan contrary to subsection 43(3) of the *Health Insurance Act*, S.O. 1990 c. H. 6, as amended, which is an offence pursuant to section 44 of the *Health Insurance Act*.
3. The facts resulting in the convictions are as follows:
 - a. Dr. Ng billed OHIP for major eye examinations for a patient known as AG that he purported to have performed on May 8, 2009 and May 8, 2010;

- b. He then submitted the claims for these examinations on May 31, 2009, and May 31, 2010 respectively;
 - c. AG was not eligible to have these examinations covered by OHIP as she did not have a referral from a physician or a nurse practitioner nor did she have the pre-requisite serious eye conditions which would make her eligible for the coverage; and
 - d. By billing OHIP for these examinations, Dr. Ng knowingly gave false information to OHIP contrary to subsection 43(3) of the *Health Insurance Act*.
4. In addition, Dr. Ng failed to maintain any records for the major eye examinations he purported to have performed on May 8, 2009 and May 8, 2010, for AG.

Patient TT

- 5. Dr. Ng billed OHIP for major eye examinations for a patient known as TT that he purported to have performed on October 31, 2010, and October 31, 2011.
- 6. He then submitted the claims for these examinations on November 25, 2010, and November 26, 2011, respectively.
- 7. TT did not see Dr. Ng on the dates referred to above. The last time she had seen Dr. Ng was in or about 2009, when she paid him in cash for an examination.
- 8. TT was not eligible to have these examinations covered by OHIP as she did not have a referral from a physician or a nurse practitioner nor did she have the pre-requisite serious eye conditions which would make her eligible for the coverage.
- 9. In addition, Dr. Ng failed to maintain any records for the major eye examinations he purported to have performed on October 31, 2010, and October 31, 2011, for TT.

Patient CL

- 10. Dr. Ng billed OHIP for periodic oculo-visual assessments, regular annual eye examinations for a patient known as CL that he purported to have performed on July 8, 2009, July 8, 2010 and July 8, 2011.
- 11. CL was 9 years of age, 10 years of age and 11 years of age respectively at the time these examinations were purported to have taken place.
- 12. Dr. Ng then submitted the claims for these examinations on July 28, 2009, July 28, 2010, and July 28, 2011, respectively.
- 13. CL did not see Dr. Ng on the dates set out above and Dr. Ng was not her optometrist.
- 14. In addition, Dr. Ng did not have any records for the patient CL.

Amendments to Statutory Provisions in Notice of Hearing

With the consent of Dr. Ng, College Counsel asked the Panel to amend the allegations in the Notice of Hearing to take into account the professional misconduct regulation that was in force at the time of the conduct.

The Panel agreed to this change and amended the Notice of Hearing as follows:

- the reference to paragraph 1.28 of Ontario Regulation 119/94 was changed to paragraph 1.32 of Ontario Regulation 859/93;
- the reference to paragraph 1.24 of Ontario Regulation 119/94 was changed to paragraph 1.27 of Ontario Regulation 859/93; and
- the reference to paragraph 1.39 of Ontario Regulation 119/94 was changed to paragraph 1.53 of Ontario Regulation 859/93.

Withdrawal of Certain Particulars

Also with the Consent of Dr. Ng, College Counsel asked the Panel for permission to withdraw all of paragraphs 10 through 14 of the particulars in Appendix “A” to the Notice of Hearing, and to withdraw the last clause of the second sentence in paragraph 7 of the particulars, so that the sentence ends with the words “...in or about 2009.” The Panel granted this request.

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 May 24, 2017, which is attached as Schedule “A” to the Agreed Statement of Facts, that he committed acts of professional misconduct as provided by subsection 51(1)(a) and (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 paragraphs 27, 32 and 53 of subsection 1(1) of Ontario Regulation 859/93 as amended made under the *Optometry Act*, 1991, S.O. 1991, c. 35.
2. Dr. Ng is an optometrist who has practised in Toronto, Ontario, since in or about January 1991.

Patient AG

3. On or about February 26, 2016, Dr. Ng pleaded guilty and was found guilty of two counts of knowingly giving false information in an application, return or statement made to the Ontario Health Insurance Plan or the General Manager for the Plan contrary to subsection 43(3) of the *Health Insurance Act*, S.O. 1990 c. H. 6, as amended, which is an offence pursuant to section 44 of the *Health Insurance Act*.

4. The facts resulting in the convictions are as follows:
 - a. Dr. Ng billed OHIP for major eye examinations for a patient known as AG that he purported to have performed on May 8, 2009 and May 8, 2010;
 - b. He then submitted the claims for these examinations on May 31, 2009, and May 31, 2010 respectively;
 - c. AG was not eligible to have these examinations covered by OHIP as she did not have a referral from a physician or a nurse practitioner nor did she have the pre-requisite serious eye conditions which would make her eligible for the coverage; and
 - d. By billing OHIP for these examinations, Dr. Ng knowingly gave false information to OHIP contrary to subsection 43(3) of the *Health Insurance Act*.
5. In addition, Dr. Ng failed to maintain any records for the major eye examinations he purported to have performed on May 8, 2009 and May 8, 2010, for AG.

Patient TT

6. Dr. Ng billed OHIP for major eye examinations for a patient known as TT that he purported to have performed on October 31, 2010, and October 31, 2011.
7. He then submitted the claims for these examinations on November 25, 2010, and November 26, 2011, respectively.
8. TT did not see Dr. Ng on the dates referred to above. The last time she had seen Dr. Ng was in or about 2009.
9. TT was not eligible to have these examinations covered by OHIP as she did not have a referral from a physician or a nurse practitioner nor did she have the pre-requisite serious eye conditions which would make her eligible for the coverage.
10. In addition, Dr. Ng failed to maintain any records for the major eye examinations he purported to have performed on October 31, 2010, and October 31, 2011, for TT.

A copy of the amended Notice of Hearing (i.e., with the corrected statutory provisions and without the particulars that were withdrawn on consent as referenced above) forms Schedule A to the Agreed Statement of Facts.

Plea

Dr. Ng pled guilty to the facts and allegations included in the Agreed Statement of Facts.

Other Evidence on Finding

In addition to the Agreed Statement of Facts, the following evidence was tendered during the finding stage: Toronto Region Information under Section 23 of the *Provincial Offences Act* relating to Dr. Ng (Exhibit 3); and Transcript of Proceedings at Guilty Plea of Friday, February 26, 2016 (Exhibit 4).

Submissions of the Parties on Finding

College Counsel explained that while Dr. Ng had been charged with 98 counts of OHIP fraud, he had ultimately only pleaded guilty and been found guilty of two of those charges. The penalty he received was a \$5,000 fine on each of the two counts. The remaining charges were withdrawn. As such, he was found guilty of only two provincial offences.

College Counsel clarified that one of Dr. Ng's provincial offences guilty pleas related to Patient AG and in this current hearing Dr. Ng has pleaded guilty to professional misconduct with respect to having been found guilty of an offence (relating to OHIP charges concerning Patient AG) relevant to his suitability to practise. (There was no provincial offence finding in relation to Patient TT, the other patient referred to in the Notice of Hearing.)

College Counsel reiterated that Dr. Ng has also admitted that he submitted claims for work he did not do in relation to Patient TT, and that he did not keep any records for Patients AG and TT, all of which constitutes professional misconduct pursuant to paragraphs 32 and 27 of the professional misconduct regulation.

In the submission of College Counsel, the totality of the conduct would reasonably be seen as disgraceful, dishonourable, unprofessional or unethical (contrary to paragraph 53 of the professional misconduct regulation) and Dr. Ng admitted that as well.

College Counsel submitted that the burden of proof was on the College, that the standard of proof was the balance of probabilities and that the College had proven its case on that standard and that it is clear that Dr. Ng billed OHIP for examinations that he had not performed, submitted false or misleading accounts, failed to maintain records, was found guilty of an offence relevant to his suitability to practice and has engaged in conduct that can reasonably be seen as disgraceful, dishonourable, unprofessional or unethical.

Counsel for Dr. Ng agreed with the submissions of College Counsel and asked the Panel to make the findings set out in the Agreed Statement of Facts.

Finding on Misconduct

After considering the Agreed Statement of Facts and the submissions of College Counsel and Counsel for Dr. Ng, the Panel found that the facts supported the following findings of professional misconduct against Dr. Ng:

1. Dr. Gordon Ng (the "Member") 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 on or about February 26, 2016, he was found guilty of an offence that is relevant to his suitability to practise optometry as set out in the particulars which are contained at Appendix “A” to the [amended] Notice of Hearing.

2. The Member 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 1.32 of Ontario Regulation 859/93 in that he submitted or allowed to be submitted an account for professional services that he knew or ought to have known is false or misleading as set out in the particulars which are contained at Appendix “A” to the [amended] Notice of Hearing.
3. The Member 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 1.27 of Ontario Regulation 859/93 in that he failed to make or maintain the records required by Part IV of the Regulation as set out in the particulars which are contained at Appendix “A” to the [amended] Notice of Hearing.
4. The Member 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 1.53 of Ontario Regulation 859/93 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 as set out in the particulars which are contained at Appendix “A” to the [amended] Notice of Hearing.

Reasons for Finding of Misconduct

Dr. Ng was alleged to have been convicted of two counts of knowingly giving false information in relation to OHIP billings for Patient AG, and failing to maintain appropriate patient records for the eye examinations he had claimed to perform for that patient. Dr. Ng was also alleged to have knowingly given false information in relation to OHIP billings for Patient TT, and similarly failed to keep any records for the eye examinations he had claimed to perform for that patient.

Dr. Ng was present at the hearing and confirmed the facts alleged by the College and that he was pleading guilty. The Panel found that the College proved the allegations on a balance of probabilities. By pleading guilty, Dr. Ng acknowledged that the facts constituted professional misconduct as provided in subsections 51(1)(a), and 51(1)(c) of the *Health Professions Procedural Code*, and as conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable, unprofessional or unethical. A conviction for billings offences and failure to maintain patient records would reasonably be seen by members of the profession in that way.

The Panel indicated that it was prepared to proceed to the penalty phase of the hearing.

Joint Submission on Penalty

College Counsel reviewed the principles of sanction that are to be addressed in any penalty order, including the protection of the public, specific deterrence, general deterrence and remediation. She also urged the panel to consider the mitigating factors in the case, which included that Dr. Ng has pleaded guilty and acknowledged his wrongdoing, thus showing insight into his behaviour and saving the College considerable time and expense. Dr. Ng also cooperated with the College investigation. College Counsel also reminded the Panel that Dr. Ng has already been punished for some of the behaviour, albeit in another venue. He was required to pay fines and victim surcharges that totalled over \$12,000.00 and had to retain counsel to assist him in the provincial prosecution.

Aggravating factors include the fact that there are several different types of behaviour at issue: having been found guilty of an offence relevant to his suitability to practice; submitting false claims; and record-keeping issues. As well, the conduct has an underlying ethical component which is aggravating, in that Dr. Ng was dishonest in his behaviour.

College Counsel advised the Panel that Dr. Ng has already been before the Discipline Committee of the College in the past – once in 2012 and once in 2016. The decisions from those hearings were entered as Exhibits 5 and 6 respectively.

College Counsel explained to the Panel that the conduct in issue in this current hearing actually occurred prior to the finding of misconduct against Dr. Ng in 2012. As well, the second hearing in 2016 arose as a direct result of the 2012 Discipline Panel's order that Dr. Ng had to comply with an inspection of his practice. That inspection identified deficiencies in Dr. Ng's record keeping that were ultimately referred to discipline, but the 2016 hearing was a direct result of the 2012 discipline order.

The OHIP conviction that led to the current hearing did not occur until after the first two discipline hearings had already taken place. College Counsel advised that if the College had known about the OHIP matters back in 2009 or 2010 (when the conduct occurred that led to the OHIP charges), the College would have addressed that conduct in the 2012 hearing. So while this is Dr. Ng's third time at a discipline hearing, the chronology is very unusual. College Counsel stated that it is not as though Dr. Ng misconducted himself again after the 2016 hearing - instead he was charged and convicted of a provincial offence after the 2016 hearing, but those charges relate to pre-2012 conduct on his part.

College Counsel entered into evidence a Joint Submission on Penalty that was signed by Dr. Ng and a College representative and it was marked as Exhibit 7.

College Counsel made submissions about why the Joint Submission on Penalty was appropriate in the circumstances of this case and met the various principles of sanction, including the most important, which is public protection.

Defence Counsel submitted that the proposed penalty was sufficient and appropriate in the circumstances. He advised that Dr. Ng cooperated fully with the Ontario Provincial Police investigation into the OHIP charges. Mr. Hussain explained that Dr. Ng's practice had been disorganized in the past, but he has now made changes to his practice to keep everything well organized so that these problems will not occur again in future. He advised that Dr. Ng has learned a very valuable lesson and he is doing all he can to

practise well so that he can contribute to society and earn a living for his family. He has paid over \$20,000 in fines and costs relating to the OHIP charges and subsequent hearing.

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.

Penalty and Costs Decision

After deliberating and considering the submissions of Counsel, the Panel accepted the Joint Submission on Penalty and ordered as follows:

1. Requiring Dr. Ng to appear before the Panel to receive a reprimand.
2. Directing Dr. Ng to pay the College's costs in the amount of \$5,000 to be paid within 3 months of the date of the Order of the Discipline Committee. Dr. Ng shall provide the Registrar with post-dated cheques for the full amount of the costs, at the hearing.
3. Directing the Registrar to suspend Dr. Ng's certificate of registration for a period of a fourteen (14) weeks, to commence on a date acceptable to the Registrar.
4. Directing the Registrar to impose a condition on Dr. Ng's certificate of registration that he complete the ProBE Ethics and Boundaries Program at his own expense and attain an "unconditional pass", prior to February 5, 2019.

Reasons for Penalty and Costs Order

The Panel believed that the Penalty and Costs Order fulfilled the various principles of sanction.

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

Upon reviewing the Joint Submission on Penalty against examples submitted by Counsel of disciplinary penalties imposed in other cases, the Panel concluded that the Joint Submission on Penalty was within the range of penalties assessed in past cases dealing with similar seriousness of conduct, taking into account both the aggravating and mitigating factors.

The Panel considered the mitigating factors. Dr. Ng pleaded guilty in both provincial court and before this Discipline Panel. In doing so, he expressed contrition for his actions and gave up his right to a full hearing, which saved time and resources. The parties have agreed to a Joint Submission on Penalty from their respective positions, which are as adversaries; both parties are ably represented by capable counsel who have fully advised them. Dr. Ng has already been convicted by the Ontario Court of Justice in relation to the facts underlying this disciplinary hearing (but for a different offence under a different statute) and received a substantial fine, plus a victim surcharge.

The Panel also considered the aggravating factors. Dr. Ng has engaged in several types of wrongful behaviour, which has in fact required enforcement through both the court system as well as multiple disciplinary hearings, as documented in the previous decisions of the Discipline Committee in Exhibits 5 and 6. Dr. Ng's behaviour has demonstrated a lack of honesty and ethics. The Panel noted that improper OHIP billing is not just a financial matter. It also reflects on public health and safety by potentially depriving the affected people of the opportunity for covered care should they need it during the allowable period.

The Panel also considered the following language from Exhibit 6:

“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.” (Exhibit 6, page 7, paragraph 8)

In considering how to address the previous Panel's warning to Dr. Ng, the Panel took note of the unusual sequence of events leading up to the current hearing. The Panel acknowledges the facts to which Dr. Ng pleaded guilty in this hearing pre-date the two earlier discipline matters that were addressed in Exhibits 5 and 6. The Panel accepts the submissions of College Counsel that if the College had known about the conduct addressed in this hearing at that time, the matters addressed in this hearing would have been included in the disciplinary matter documented in Exhibit 5. The disciplinary hearing documented in Exhibit 6 was in turn based on facts that were a direct consequence of the matters considered in Exhibit 5. On that basis, the Panel concluded that the misconduct addressed in this hearing does not amount to disregard by Dr. Ng of the earlier decision and reprimand delivered by the Discipline Committee in 2016 as documented in Exhibit 6.

Further, the Panel considered the four factors put forward by College Counsel in light of the Joint Submission on Penalty and the particular circumstances of this situation. Rehabilitation of the member is addressed through the ethics course he must take, at which he must achieve an unconditional pass. Public protection is addressed through the combination of the ethics 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 plus an additional reprimand and the costs.

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 mitigating factors, the penalty was fair and reasonable and would not bring the administration of justice into disrepute.

The Panel felt that it was appropriate to order Dr. Ng to pay \$5,000 in costs, which represents only a portion of the costs expended by the College in the investigation, prosecution and hearing of this matter. A costs Order is intended not to punish the Member, but to allocate fairly the costs of the proceeding, which would otherwise be borne by his peers through their College dues.

At the conclusion of the hearing and after confirming that Dr. Ng had waived his right to appeal the reprimand, the Panel administered the reprimand to Dr. Ng, a copy of which is attached to this decision.

Dated this 7 day of March, 2018, at Toronto, Ontario.

(Signed)

Ms. Ellen Pekilis, Chair

TEXT OF PUBLIC REPRIMAND

Delivered on February 6, 2018

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 recognizes that the events in issue today occurred around the same time as the conduct in your 2012 discipline matter and that your second discipline matter arose directly from the inspection ordered in the 2012 hearing. Regardless, this is the third time you have appeared before a Discipline Panel.

The panel considers your fraudulent behaviour to be of a serious nature. Optometrists have a fiduciary duty to the public with regard to OHIP billing. OHIP is publicly funded and optometrists must honour that fact by acting with integrity and honesty when submitting their claims. Your failure to respect this duty would have negatively affected the public's perception of the profession.

Furthermore, when you bill OHIP for services not rendered, you are depriving the patient of the ability to access funded care should they need it in the following allowable period.

You are being given a second opportunity to demonstrate your understanding of and commitment to ethical behaviour through taking the ProBE Ethics and Boundaries program. The panel trusts that you will work very hard to obtain an unconditional pass. Failure to achieve an unconditional pass in the ethics course and to demonstrate ethical behaviour in your practice in the future can be expected to lead to further consequences.

Similarly, the patient record is of vital importance to ongoing care of the patient. Inappropriate record keeping is not a trivial matter.

We trust that you have learned from this series of experiences, and that your future professional practice will reflect improved record keeping and ethical behaviour. We expect not to see you again before a Discipline Panel.