

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

Panel: Ms. Ellen Pekilis, Chair
Dr. Linda Chan
Mr. Bashar Kassir

B E T W E E N:

The College of Optometrists of Ontario)	Ms. Julia Martin
)	Counsel for the College
)	of Optometrists of Ontario
)	
- and -)	
)	
)	
Dr. Gyanesh Kumar Verma)	Mr. Lonny Rosen and Ms. Emma Gardiner
)	Counsel for Dr. Gyanesh Kumar Verma
)	
)	
)	Ms. Julie Maciura
)	Independent Legal Counsel
)	
)	Heard on February 7, 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 7, 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. Gyanesh Verma.

The three members of the Discipline Panel referred to above were in attendance, as well as Dr. Gyanesh Verma; Mr. Lonny Rosen and Ms. Emma Gardiner, counsel for Dr. Verma; 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 9:50 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 was amended on the consent of the parties to change the phrase “optometric profession corporation” to “optometry professional corporation”. The amended Notice of Hearing alleged that:

1. You have committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* (the “Code”) being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991 C.18, and defined in paragraph 1.7 of Ontario Regulation 119/94 in that you engaged in the practice of optometry while in a conflict of interest contrary to subsection 3(1) of Ontario Regulation 119/94 as follows and as set out in the particulars which are contained at Appendix “A” to the Notice of Hearing:
 - i. You engaged in the practise of the profession in a working arrangement contrary to paragraph 3(2)(g); and
 - ii. You shared fees related to the practice of the profession with another person other than another member or a member of the College of Physicians and Surgeons of Ontario as set out at paragraph 3(2)(h).
2. You have committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the Code, and defined in paragraph 1.36 of Ontario Regulation 119/94 in that you contravened, by act or omission, the *Optometry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts for practising the profession through a corporation without having incorporated a professional corporation and obtaining a certificate of authorization as required by section 85.8 of the Code and Ontario Regulation 39/02. The particulars are set out at Appendix “A” to the Notice of Hearing.

Appendix “A”

1. Dr. Gyanesh Kumar Verma is an optometrist who has practised in Ontario since in or about July 27, 2011.

Conflict of Interest

2. In or about 2012, Dr. Verma entered into a working arrangement with N [REDACTED] P., an optician, to work at five Vision Express optical outlets in the Greater Toronto Area (GTA).
3. Dr. Verma or his wife, Meenu Verma, were part owners of some or all of the Vision Express optical outlets with Mr. P.
4. Mr. P. is not a member of the College of Physicians of Ontario nor is he a member of the College of Optometrists of Ontario.
5. Dr. Verma practised optometry at the Vision Express optical outlets from in or about 2012 to in or about January 1, 2015, without having entered into an independent contractor agreement with Mr. P.

6. Also during this same time period, Dr. Verma allowed Mr. P. to collect the fees that Dr. Verma billed his patients and then paid fixed monthly payments to Dr. Verma.
7. Dr. Verma therefore shared his fees with Mr. P.

Optometry Professional Corporation

8. From in or about October 2011, to in or about January 2015, Dr. Verma practised optometry through Better Vision Inc.
9. Better Vision Inc. was not incorporated as an optometry professional corporation and it did not have a certificate of authorization.

Agreed Statement of Facts

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

The Agreed Statement of Facts provided as follows:

1. Dr. Gyanesh Verma hereby pleads guilty to the allegations as set out in paragraphs one (1) and two (2) [of] the Notice of Hearing dated July 17, 2017, in that he committed acts of professional misconduct under paragraphs 7 and 36 of subsection 1(1) of Ontario Regulation 119/94, as amended, made under the *Optometry Act, 1991*. S.O. 1991, c. 35. The Notice of Hearing is attached as Schedule "A" to this Agreed Statement of Facts.
2. Dr. Verma is an optometrist who has practised in Ontario since in or about July of 2011.

Conflict of Interest

3. In or about 2012, Dr. Verma entered into a working arrangement with Mr. P., an optician, to work at five Vision Express optical outlets in the Greater Toronto Area.
4. Dr. Verma or his wife, Meenu Verma, were part owners of some or all of the Vision Express optical outlets with Mr. P.
5. Mr. P. is not a member of the College of Physicians and Surgeons of Ontario nor is he a member of the College of Optometrists of Ontario.
6. Dr. Verma practised optometry at the Vision Express optical outlets from in or about 2012, to in or about January 1, 2015, without having entered into an independent contractor agreement with Mr. P.
7. Also during this same time period, Dr. Verma allowed Mr. P. to collect the fees that Dr. Verma billed his patients and from those monies Mr. P. paid Dr. Verma fixed monthly payments.

8. Dr. Verma therefore shared his fees with Mr. P.
9. Dr. Verma engaged in the practice of optometry while in a conflict of interest contrary to subsection 3(1) of Ontario Regulation 119/94 as follows:
 - a. He engaged in the practise of the profession in a working arrangement contrary to paragraph 3(2)(g); and
 - b. He shared fees related to the practice of the profession with another person other than another member or a member of the College of Physicians and Surgeons of Ontario as set out at paragraph 3(2)(h).

Optometry Professional Corporation

10. From in or about October 2011, to in or about January 2015, Dr. Verma practised optometry through Better Vision Inc.
11. Better Vision Inc. was not incorporated as an optometry professional corporation and it did not have a certificate of authorization.
12. Dr. Verma therefore contravened, by act or omission, the *Optometry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts for practising the profession through a corporation without having incorporated a professional corporation and obtaining a certificate of authorization as required by section 85.8 of the Code and Ontario Regulation 39/02.

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Dr. Verma accepted the facts and allegations set out in the Agreed Statement of Facts.

Submissions on Misconduct

College Counsel carefully took the Panel through the legislative provisions relating to conflict of interest and professional health corporations to demonstrate how the various provisions related. College Counsel described how Dr. Verma engaged in the practice of the profession in a working arrangement with another person who was not either an optometrist or a member of the College of Physicians and Surgeons of Ontario engaged in the practice of medicine (or one of the other exceptions, none of which applied) and he did not have an independent contractor arrangement in place pursuant to subsection 4(5) of Ontario Regulation 119/94 under the *Optometry Act, 1991*, which allows members to practice with other non-members without being seen to be in a conflict of interest. Dr. Verma allowed Mr. P. to collect the fees and then pay Dr. Verma fixed monthly payment, so Dr. Verma shared fees with him.

Additionally, the legislation requires that the only way to practice optometry through a corporation is to establish a health profession corporation, which is one incorporated under the *Ontario Business Corporations Act* that holds a valid certificate issued under the *Regulated Health Professions Act*.

College Counsel thoroughly explained to the Panel the rationale and objectives of the rules relating to conflict of interest. Those rules were passed in order to address changes to the way that the profession was doing business some years ago and are intended to ensure the independence of the optometrist to make certain that he or she remains accountable for their decisions and is not influenced by commercial interests. All of the items that must be in an independent contractor agreement as required by subsection 4(5) of Ontario Regulation 119/94 contribute to the control, autonomy, independence and accountability of the optometrist regardless of the business context in which he or she works. The requirements are intended to protect the public from being forced into getting services they don't need and from being overcharged for services. The rules also allow patients to obtain their prescriptions directly from the optometrist so that they can have more choice about where they wish to buy their eyeglasses and contact lenses. The rules also allow patients to obtain their health records directly from their optometrist.

College Counsel submitted that the College had proven its case on a balance of probabilities. College Counsel further submitted that the conduct constitutes professional misconduct.

Counsel for the Member agreed with College Counsel submissions and also pointed out to the Panel that Dr. Verma had ended the problematic business relationship prior to the filing of the complaint that led to the referral to discipline. Additionally, he commented that there is no suggestion in the Agreed Statement of Facts allegations that any of the negative consequences or "mischief" that the conflict of interest rules are intended to prevent, actually occurred.

Counsel for the College stated in reply that there was no evidence one way or another as to whether there were any negative consequences to patients from the business relationship and lack of independent contractor agreement.

Finding on Misconduct

After considering the evidence entered and the submissions of College Counsel and Counsel for Dr. Verma, the Panel found that the facts supported the following findings against Dr. Verma:

1. That Dr. Gyanesh Verma (the "Member") committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* (the "Code") being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 C.18, and defined in paragraph 1.7 of Ontario Regulation 119/94 in that you engaged in the practice of optometry while in a conflict of interest contrary to subsection 3(1) of Ontario Regulation 119/94 as follows and as set out in the particulars which are contained at Appendix "A" to the Notice of Hearing:
 - i. That the Member engaged in the practise of the profession in a working arrangement contrary to paragraph 3(2)(g); and
 - ii. That the Member shared fees related to the practice of the profession with another person other than another member or a member of the College of Physicians and Surgeons of Ontario as set out at paragraph 3(2)(h).

2. That the Member committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the Code, and defined in paragraph 1.36 of Ontario Regulation 119/94 in that he contravened, by act or omission, the *Optometry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts for practising the profession through a corporation without having incorporated a professional corporation and obtaining a certificate of authorization as required by section 85.8 of the Code and Ontario Regulation 39/02.

Reasons for Finding of Misconduct

The Panel found that the College proved the allegations on a balance of probabilities. Dr. Verma also agreed that he engaged in the misconduct.

Allegation 1 (Conflict of Interest)

The Panel found that Allegation 1 was proven and that Dr. Verma engaged in the practice of optometry while in a conflict of interest because he practised the profession with someone other than another member or a person exempted by section 3(2)(g) of Ontario Regulation 119/94 and did not have an independent contractor agreement in place pursuant to subsection 4(5). He also shared fees with that person contrary to section 3(2)(g) of Ontario Regulation 119/94.

Allegation 2 (Optometry Professional Corporation)

The Panel found that Allegation 2 was proven and that Dr. Verma practised the profession through a corporation without having incorporated a professional corporation and having obtained a certificate of authorization as required by section 85.8 of the Code and Ontario Regulation 39/02.

Joint Submission on Penalty

College Counsel entered a Joint Submission on Penalty that was signed by Dr. Verma and a College representative and was marked as Exhibit 3. 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 factors:

1. The protection of the public;
2. The specific deterrence of the member from this type of conduct;
3. The general deterrence to ensure that other members of the profession will not engage in conduct of this nature; and
4. Rehabilitation of the member

College Counsel then explained how the proposed penalty in the Joint Submission on Penalty would satisfy the above factors. In her submission the conduct is at the low end of the spectrum and as such the penalty should be focused on remedial aspects and there is no need to include a period of suspension.

College Counsel suggested that there were numerous mitigating factors in this case including the fact that this was Dr. Verma's first time at discipline, he cooperated with the investigation, he acknowledged his wrongdoing, he showed insight into his conduct and his plea saved the College time and money. As well,

the allegations do not involve fraud or dishonesty; there is no element of moral turpitude involved and no evidence of any patient harm.

The aggravating factor was that as a relatively new member of the profession, Dr. Verma should have known what the rules were. As well, there were two types of misconduct at issue.

College counsel was unable to find any cases that would assist the panel, as prior cases dealing with conflict of interest were either much more serious or involved other types of misconduct as well.

Defence Counsel agreed with College Counsel that the proposed penalty was appropriate and asked that it be ordered by the Panel. Ms. Gardiner reminded the Panel that Dr. Verma had ceased the business relationship at issue prior to the matter being referred to discipline and as such, specific deterrence was not an overriding concern in this case. She submitted that the case was really one that arose because Dr. Verma did not understand the rules with respect to conflict of interest or incorporation. There was also no evidence submitted to show that Dr. Verma was profitable in this scheme or that he did anything that he would not have been able to do if in fact he had entered into the necessary independent contractor agreement.

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. Verma. By entering into an Agreed Statement of Fact and Joint Submission on Penalty, Dr. Verma 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.

Penalty and Costs Decision

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

1. Requiring Dr. Verma to appear before the Panel to receive a reprimand.
2. Directing the Registrar to impose the following terms, conditions and limitations shall be imposed on Dr. Verma's certificate of registration:
 - i. That he write an essay, within 60 days of the date of the Order of the Discipline Committee, the details of which are as follows:
 - a. It must set out the requirements for preventing a conflict of interest as set out in Ontario Regulation 119/94;

- b. It must address the principles of conflict of interest, why a professional must control conflict of interest and in particular why it is important for optometrists to minimize conflict of interest or control that which cannot be eliminated;
 - c. It must contain self-reflection on the situation that resulted in the referral and the safeguards he intends to implement into his practice to minimize the possibility of recurrence;
 - d. It must be referenced and properly annotated and constitute Dr. Verma's original work;
 - e. It must be at minimum 1,000 words in length; and
 - f. The Registrar shall determine whether or not the essay is acceptable; if it is not, Dr. Verma will be required to correct it to the Registrar's satisfaction.
- ii. That Dr. Verma provide to the Registrar copies of his Independent Contractor Agreements ("ICAs") for every location where he practises optometry with anyone, other than another member engaged in the practice of optometry or physician who is engaged in the practice of medicine, for a period of three years following the date of the Order of the Discipline Committee. The ICAs must be in compliance with the conflict of interest provisions in Ontario Regulation 119/94.
3. The payment of the College's costs in investigating and prosecuting this matter in the amount of \$7,500 to be paid in two installments of \$3,750 by way of post-dated cheques made payable to the College of Optometrists of Ontario dated March 7, 2018 and April 7, 2018. Dr. Verma shall provide the cheques to the Registrar at the Discipline Hearing.

Reasons for Penalty and Costs Order

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.

The Panel considered the mitigating factors. Dr. Verma has no prior history of discipline before the College, was cooperative and acknowledged his wrongdoing. His guilty plea saved time and resources. There was no evidence of actual patient harm; nor was there any evidence of fraud or dishonesty in Dr. Verma's behavior.

The Panel also considered the aggravating factors. Dr. Verma is a new practitioner. Through the recency of his education, he should have known and respected the rules. In addition, the issues relating to conflict of interest and registering a professional corporation are two separate types of misconduct.

The Panel felt that the Penalty and Costs Order fulfilled the various principles of sanction. The Panel considered the Penalty and Costs Order from the perspective of the various parties impacted – the public, the member and the profession of optometry.

The Panel emphasized the importance to public protection of continuing to ensure the independence of professional judgment from commercial influences at times when business arrangements are evolving. The Order meets the principle of protection of the public by requiring Dr. Verma to compose an essay demonstrating his understanding of the conflict of interest rules. The Panel emphasized that the rules are not administrative busy-work, but serve an important public protection purpose, and the Panel agreed that understanding will lead to compliance.

College oversight of Dr. Verma's independent contractor agreements will ensure that he follows the rules in future.

The Order addresses the requirement for specific deterrence by including a reprimand, so that Dr. Verma understands the opinion of the public and his fellow members. In addition, the essay will demonstrate his understanding of the rules to the satisfaction of the Registrar, which the Panel is confident will lead to future compliance. Finally, oversight by the Registrar of his future independent contractor agreements will serve as specific deterrence to the Member.

The principle of general deterrence is met by all of the elements of this penalty order. The penalty order, as described in this decision, demonstrates to the profession that there are both serious expectations for members to meet the requirements, and that there are consequences for failing to do so. The contract oversight portion of the decision serves to remind Members that failure to comply will lead to the College directly engaging in review of their contract documentation. The reprimand serves to remind not just Dr. Verma but the broader membership that the regulatory requirements at issue in this hearing are not merely administrative paperwork. The requirements were created to meet an important public purpose, which is to ensure that optometrists maintain independence in their professional judgment and remain free from inappropriate commercial influence in exercising their professional responsibilities.

Remediation of the Member is at the core of the Order, through writing the essay which will develop an understanding and appreciation of the rules, together with supervision of Dr. Verma's independent contractor agreements.

In terms of the Costs Order, the Panel felt this was an appropriate case for an order on costs, to partially reimburse the College for the costs of the discipline hearings process. The Panel acknowledges that the amount of the Costs Order will serve as a specific deterrence to recurrence of any similar behaviour by Dr. Verma. However, the Panel notes that the true purpose of the Costs Order is 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.

The Panel felt that it was appropriate to order Dr. Verma to pay \$7,500 which represents only a portion of the costs expended by the College in the investigation, prosecution and hearing of this matter.

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

(Signed)

Ms. Ellen Pekilis, Chair

TEXT OF PUBLIC REPRIMAND

Delivered on February 7, 2018

College of Optometrists of Ontario and Dr. Gyanesh Verma

You have been found guilty of two allegations of professional misconduct. One is in relation to conflict of interest, and the other relates to failure to have a professional corporation authorized by the College as required by the regulations.

The Discipline Panel would like to emphasize that these requirements are not merely administrative paperwork. The requirements were created to meet an important public purpose, which is to ensure that optometrists maintain independence in their professional judgment and remain free from inappropriate commercial influences in exercising their professional responsibilities. This protects the public from being given services that they neither want nor need, and ensures that patients get access to their prescriptions and other records so that they can exercise their freedom of choice in obtaining products and services. At the core, the goal of these rules is to protect the public by preserving the independence and autonomy of optometrists in a real life business context.

We hope that you have learned from this experience, and we expect that you will not find yourself in front of another Discipline Panel.