

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

Panel: Dr. Pooya Hemami, Chair
Ms. Suzanne Allen
Dr. Patrick Quaid
Dr. Natalija Ilic
Mr. Narendra Shah

B E T W E E N:

The College of Optometrists of Ontario)	Julia Martin
)	Counsel for the College
)	of Optometrists of Ontario
)	
- and -)	
)	
)	
Dr. Yunfan Zhang)	Arthur Zeilikman
)	Counsel for the Member
)	
)	
)	Ms. Julie Maciura
)	Independent Legal Counsel
)	
)	Heard on April 2, 2024

DECISION AND REASONS

This matter came before a Panel of the Discipline Committee of the College of Optometrists of Ontario (the “College”) and was held virtually on April 2, 2024.

The purpose of the hearing was to consider allegations of professional misconduct referred by the Inquiries, Complaints and Reports Committee against Dr. Yunfan Zhang (the “Member”).

The five members of the Discipline Panel referred to above were in attendance, as well as the Member, who was represented by Mr. Arthur Zeilikman; Ms. Julia Martin, counsel for the College, accompanied by Ms. Adrita Shah Noor; and Ms. Julie Maciura, independent legal counsel to the Discipline Panel.

The hearing was called to order at 9:30 a.m. on April 2, 2024. The Chair introduced the Panel and the other people present in the room.

Publication Ban

Prior to tendering the Notice of Hearing, the College requested that the Panel make an order pursuant to subsection 45(3) of the *Regulated Health Professions Act, 1991* S.O. 1991 c. 18, banning the publication, broadcasting or disclosure of the name of the patients referred to during the hearing or mentioned in any documentation filed at the hearing and/or any information that would disclose the identity of the patients. Member's counsel consented to the order and the Panel granted the order.

Allegations and Evidence

College Counsel took the Panel through the Notice of Hearing, dated September 22, 2023, which was entered into evidence as Exhibit 1.

The Notice of Hearing included the following allegations against the Member:

1. Dr. Yunfan Zhang committed an act or acts of professional misconduct as provided by paragraph 51(1)(c) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C.18, and defined in the following paragraphs of Ontario Regulation 119/94 and as set out in the particulars at Schedule 1 to this Notice of Hearing:
 - a. paragraph 1.24 failed to make or maintain the records required by Part IV of the Regulation;
 - b. paragraph 1.25 falsified a record relating to a member's practice;
 - c. paragraph 1.28 submitted or allowed to be submitted an account for professional services that he knew or ought to have known is false or misleading; and
 - d. paragraph 1.39 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.

Particulars of the allegations were contained in seven Schedules to the Notice of Hearing, including Schedule 1, as follows:

Schedule 1

1. At all material times, Dr. Yunfan Zhang was an optometrist duly registered with the College of Optometrists of Ontario.
2. From in or about 2019 to in or about 2021, Dr. Zhang submitted claims to the Ontario Health Insurance Plan ("OHIP") that he knew or ought to have known were false or misleading as follows:
 - a. Dr. Zhang submitted OHIP claims for contact lens related services for the patients at Schedule 2, who did not meet the inclusion criteria set out in subparagraphs i. through

- iv. of paragraph 12 of subsection 24(1) Ontario Regulation 552 made under the *Health Insurance Act*, R.S.O. 1990, c. H. 6, on the dates and for the reasons set out at Schedule 2.
 - b. Dr. Zhang submitted OHIP claims for myopia management for the patients at Schedule 3 which were not OHIP insured services as they were not Oculo-visual Minor Assessments that met the conditions of the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021) on the dates and for the reasons set out at Schedule 3.
 - c. Dr. Zhang submitted OHIP claims for the patients at Schedule 4 who were between the ages of 20 and 64 that were not OHIP insured as they did not meet the requirements in the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021) and/or the Ontario Association of Optometrists Billing Guide, on the dates and for the reasons set out at Schedule 4.
 - d. Dr. Zhang submitted OHIP claims for the patients at Schedule 5 for services that were not insured as they took place on the telephone or by email, on the dates set out at Schedule 5, which is contrary to paragraph 5 of subsection 24(1) of Ontario Regulation 552 made under the *Health Insurance Act*, S.O. 1990, c. H 6., as well as the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021), and the Ontario Association of Optometrists Billing Guide.
 - e. Dr. Zhang submitted an OHIP claim for the patient at Schedule 6 for a prescription renewal which was not an insured service as it did not comply with paragraph 9 of subsection 24(1) of Ontario Regulation 552 made under the *Health Insurance Act*, S.O. 1990 and the Ontario Association of Optometrists Billing Guide, on the date set out at Schedule 6.
 - f. Dr. Zhang submitted an OHIP claim for the patient at Schedule 7 for a glasses repair which was not an insured service under the Schedule of Benefits for Optometry Services (April 1, 2009, and April 1, 2021), on the date set out at Schedule 7.
3. Dr. Zhang therefore committed an act or acts of professional misconduct as provided by paragraph 51(1)(c) of the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 c.18, and defined in the following paragraphs of Ontario Regulation 119/94 made under *the Optometry Act, 1991*, S.O. 1991 c. 35:
- a. paragraph 1.24 failed to make or maintain the records required by Part IV of the Regulation;
 - b. paragraph 1.25 falsified a record relating to a member's practice;
 - c. paragraph 1.28 submitted or allowed to be submitted an account for professional services that he knew or ought to have known is false or misleading; and
 - d. paragraph 1.39 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.

Schedules 2 through 7 of the Notice of Hearing included references to various patients with respect of whom allegations were made that Dr. Zhang had billed OHIP inappropriately because: the reason claim did not meet the inclusion criteria; certain claims were made for myopia management that were not OHIP insured; certain claims were for persons between the ages of 20 and 64; certain services were performed via email or telephone; and one claim was for glasses repair.

REQUEST TO WITHDRAW CERTAIN ALLEGATIONS

College Counsel advised the Panel that the College would be seeking to withdraw the allegations in paragraphs 1b and 1c of the NOH (paragraphs 1.25 and 1.28 of Ontario Regulation 119/94) because the evidence did not support findings under those allegations, as well as the words “disgraceful, dishonourable and unethical” from paragraph 1d of the Notice of Hearing (paragraph 1.39 of Ontario Regulation 119/94) in light of the circumstances of the case.

College Counsel further advised the Panel that the College would not be pursuing a number of the particulars set out in the schedules to the Notice of Hearing.

AGREED STATEMENT OF FACTS and MEMBER’S PLEA

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

The Agreed Statement of Fact is as follows:

Facts and Admissions

1. At all material times, Dr. Yunfan Zhang was an optometrist duly registered with the College of Optometrists of Ontario.
2. From in or about 2019 to in or about 2021, Dr. Zhang submitted claims to the Ontario Health Insurance Plan (“OHIP”) as follows:
 - a. Dr. Zhang submitted OHIP claims for contact lens related services for the patients at Schedule 2, who did not meet the inclusion criteria set out in subparagraphs i. through iv. of paragraph 12 of subsection 24(1) Ontario Regulation 552 made under the *Health Insurance Act*, R.S.O. 1990, c. H. 6, on the dates and for the reasons set out at Schedule 2.
 - b. Dr. Zhang failed to make or maintain the records required by Part IV of Ontario Regulation 119/94 for a patient at Schedule 2.
 - c. Dr. Zhang submitted OHIP claims for myopia management for the patients at

Schedule 3 which were not OHIP insured services as they were not Oculo-visual Minor Assessments that met the conditions of the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021) on the dates and for the reasons set out at Schedule 3.

- d. Dr. Zhang submitted an OHIP claim for the patient at Schedule 4 who was between the ages of 20 and 64 who was not OHIP insured as they did not meet the requirements in the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021) and/or the Ontario Association of Optometrists Billing Guide, on the dates and for the reasons set out at Schedule 4.
 - e. Dr. Zhang submitted OHIP claims for the patients at Schedule 5 for services that were not insured as they took place on the telephone or by email, on the dates set out at Schedule 5, which is contrary to paragraph 5 of subsection 24(1) of Ontario Regulation 552 made under the *Health Insurance Act*, S.O. 1990, c. H 6., as well as the Schedule of Benefits for Optometry Services (April 1, 2009 and April 1, 2021), and the Ontario Association of Optometrists Billing Guide.
 - f. Dr. Zhang submitted an OHIP claim for the patient at Schedule 6 for a prescription renewal which was not an insured service as it did not comply with paragraph 9 of subsection 24(1) of Ontario Regulation 552 made under the *Health Insurance Act*, S.O. 1990 and the Ontario Association of Optometrists Billing Guide, on the date set out at Schedule 6.
 - g. Dr. Zhang submitted an OHIP claim for the patient at Schedule 7 for a glasses repair which was not an insured service under the Schedule of Benefits for Optometry Services (April 1, 2009, and April 1, 2021), on the date set out at Schedule 7.
3. If Dr. Zhang were called to testify, he would state that,
- a. the claims referred to in paragraph 2 were submitted in error and that he did not intend to improperly bill OHIP or charge or receive more than the amount payable under OHIP; and
 - b. failure to obtain a written requisition was unintentional and, with respect to patient [REDACTED] (Schedule 4), was due to the fact that it was an urgent matter of which he was advised by the referring physician verbally.
4. Dr. Zhang therefore admits that he committed an act or acts of professional misconduct as provided by paragraph 51(1)(c) of the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991 c.18, and defined in the following paragraphs of Ontario Regulation 119/94 made under the *Optometry Act*, 1991, S.O. 1991 c. 35:

- a. paragraph 1.24 failed to make or maintain the records required by Part IV of the Regulation;
 - b. paragraph 1.31 charged or received more than the amount payable under the Ontario Health Insurance Plan for performing an insured service to an insured person; and
 - c. paragraph 1.39 engaged in conduct or performed an act that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional.
5. The reports of [REDACTED], the independent expert retained by the College of Optometrists of Ontario (the “College”) dated April 27, 2023, and December 11, 2023, are attached as Exhibit “A”.
 6. The reports of [REDACTED], the independent expert retained by Dr. Zhang, dated October 23, 2023, December 2, 2023, and January 6, 2024 (including her email exchange with the Ministry of Health) are attached as Exhibit “B”.

Acknowledgements

7. The parties agree that these facts are substantially accurate.
8. Dr. Zhang understands the nature of the allegations that have been made against him and understands that by voluntarily admitting these allegations, he waives his right to require the College to otherwise prove the case against him with respect to those allegations.
9. Dr. Zhang understands that the Discipline Committee can accept that the facts herein constitute professional misconduct as set out in paragraph 4, above.
10. Dr. Zhang understands that any agreement between him and the College does not bind the Discipline Committee.
11. Dr. Zhang acknowledges that he has received independent legal advice.

Schedule 2

OHIP claims for contact lens related services for patients who did not meet the inclusion criteria or failed to make or maintain the records

Patient	Date	Billing Code	Reason claim did not meet inclusion criteria or failure to maintain records
[REDACTED]	19-01-31	402 367	Contact lens tinting follow up.
[REDACTED]	21-03-13	409 370	Claim meets inclusion criteria, however, poor documentation

█	21-03-24	402 367	Contact lens follow up.
█	20-04-01	402 366	E-mail request for trial contact lenses. No assessment.

Schedule 3

OHIP claims for myopia management that were not OHIP insured

Patient	Date	Billing Code	Reason not OHIP insured
█	20-10-11	402 367	Orthokeratology Myopia management program started, axial length measure included in global fee.
█	21-01-06	404 367	Myopia management prescription topical drops renewal. No assessment.

Schedule 4

OHIP claims for uninsured services provided to a person between the ages of 20 and 64.

Patient	Date	Billing Code	Reason not OHIP insured
█	21-03-02	409 368	No requisition obtained prior to submitting OHIP claim.

Schedule 5

OHIP claims for uninsured services by telephone or e-mail

Patient	Date	Billing Code	Reason not OHIP insured
█	21-01-06	404 367	Telephone request for Prescription renewal, no assessment.
█	20-04-01	402 366	E-mail request for trial contact lenses, no assessment.

Schedule 6

Patient	Date	Billing Code	Reason not OHIP insured
■	21-01-06	404 367	Telephone request for prescription renewal, no assessment

Schedule 7

OHIP claim for uninsured services for glasses repair

Patient	Date	Billing Code	Reason not OHIP insured
■	20-12-06	402 367	Record says "frame broken, need to transfer lenses to a new frame" No other exam notes, no assessment

Submissions of the Parties on Finding

In addition to the request to withdraw certain allegations as described above, College Counsel advised the Panel that the parties had jointly agreed to include an admission to paragraph 1.31 of Ontario Regulation 119/94 because that label of misconduct better fit the evidence than did the allegations that were withdrawn. College Counsel submitted that this was an unusual case insofar as evidence became known to the College after the allegations were originally referred by the Inquiries, Complaints and Reports Committee ("ICRC"), primarily through the expert report tendered by the Member, which demonstrated that the issues in this case related not to fraudulent behaviour but to a lack of knowledge about OHIP billing.

College Counsel submitted that the evidence in the Agreed Statement of Facts demonstrated professional misconduct on a balance of probabilities and encouraged the Panel to make findings as set out in that document.

Member's counsel agreed with the submissions made by College Counsel.

Finding on Misconduct

After considering the Agreed Statement of Facts and the submissions of College Counsel and Counsel for the Member, the Panel found that the facts supported the findings of professional misconduct as set out in the Agreed Statement of Facts, more particularly, the Member's conduct amounted to professional misconduct pursuant to paragraphs 1.24, 1.31 and 1.39 (unprofessional only) of Ontario Regulation 119/94, under the *Optometry Act, 1991*, S.O. 1991.

The Panel accepted the withdrawal of paragraphs 1.25 and 1.28 of Ontario Regulation 119/94, under the *Optometry Act, 1991*, S.O. 1991. In its view those paragraphs of the professional misconduct regulation were not warranted given the parties' submissions and given the Member's agreement to plead guilty to a breach of paragraph 1.31 instead. Given that the Member was

pleading guilty to three labels of misconduct, the Panel was prepared to grant the request for the withdrawal of the others and was prepared to accept a plea to an allegation that was not originally referred by the ICRC because it much more appropriately fit the conduct.

The Panel also accepted the withdrawal of the words “disgraceful, dishonourable and unethical” from paragraph 1d of the Notice of Hearing and agrees that it is reasonable to determine that the evidence in the Agreed Statement of Facts is sufficient to demonstrate that the Member’s conduct was unprofessional only.

The Member, who was present at the hearing, agreed with the College that the conduct set out in the Agreed Statement of Facts, to which he admitted engaging, constitutes professional misconduct.

The Panel believed that the information included in the Agreed Statement of Facts and as presented by College Counsel showed that the facts constituted the three different heads or labels of misconduct to which the Member pled guilty.

After making its findings of misconduct, the Panel indicated that it was prepared to proceed to the penalty phase of the hearing.

JOINT SUBMISSION ON PENALTY

College Counsel provided to the Panel a Joint Submission on Penalty that was signed by the Member and was marked as Exhibit 3.

The Joint Submission proposed the following Order:

The Parties submit that the following is the appropriate penalty based on the findings made by the Panel of the Discipline Committee:

1. That Dr. Zhang be required to appear before the Panel to be reprimanded at the conclusion of the discipline hearing.
2. That the Registrar be directed to impose a condition on Dr. Zhang's certificate of registration that he complete a practice coaching program with a practice coach in the area of OHIP billing and record keeping by December 31, 2024, as follows:
 - a. he shall complete a total of ten (10) hours of practice coaching;
 - b. the practice coach shall be approved by the Registrar;
 - c. the practice coach shall meet with Dr. Zhang and/or attend at Dr. Zhang’s practice to review Dr. Zhang’s OHIP billing and record keeping;

- d. the practice coach will determine what if any additional reading and review of materials Dr. Zhang will be required to undertake in preparation for the practice coaching/review sessions;
 - e. the practice coach shall provide a report to the College confirming the completion of the coaching and identifying any areas of concern if any; and
 - f. the practice coaching shall be at Dr. Zhang's expense.
3. That the Registrar be directed to impose a condition on Dr. Zhang's certificate of registration that following the completion of the practice coaching and on or before March 31, 2025, that he successfully undergo an inspection of his OHIP billing and record keeping as follows:
- a. the inspection shall be conducted by an inspector approved by the College;
 - b. the inspector shall review Dr. Zhang's OHIP billing and record keeping;
 - c. the inspector shall provide a report to the College and identifying any areas of concern if any; and
 - d. the inspection shall be at Dr. Zhang's expense.

College Submissions on Penalty

College Counsel submitted that the purpose of any penalty order is threefold: to protect the public; to provide specific deterrence; and to provide general deterrence in order to stop other members from engaging in similar conduct.

College Counsel also submitted that another purpose of a penalty order is to rehabilitate and that latter principle may be the most relevant one in this case. The proposed penalty is primarily aimed at teaching Dr. Zhang how to avoid these types of inappropriate billings in the future.

College Counsel submitted that the Panel was required to take into account both the aggravating and mitigating factors in the case. In her submission, an aggravating factor was the type of misconduct at issue, in that the OHIP system relies on trusting health professionals who are permitted to bill OHIP to know the rules and to abide by them.

College Counsel also submitted that in terms of mitigating factors, there are no prior findings against the Member, the Member has been co-operative with the investigation and accepted responsibility for his actions and acknowledged his guilt, thereby saving time and cost to the College.

College Counsel reminded the Panel that the parties were jointly submitting what they believed was the appropriate penalty. College Counsel submitted that the Supreme Court of Canada in *R. v*

Anthony-Cook (2016 SSC 43) has set the test for rejection of a joint submission very high and that the Panel could only reject it if the acceptance of the penalty would bring the administration of justice into disrepute or be otherwise contrary to the public interest.

College Counsel was unable to find any cases that were similar on the facts given the unusual nature of the matter before the Panel but did mention two previous cases (*Stepec and Ng*) where suspensions had been ordered but where the conduct was much more egregious and overt.

College Counsel submitted that in the circumstances, the proposed order is a reasonable resolution and would not bring the administration and principles of justice into disrepute and urged the Panel to accept it.

College Counsel advised that the College was not seeking costs in light of the circumstances and given that many of the particulars in the Notice of Hearing had been withdrawn after the College had the benefit of considering the Member's expert report.

Member Submissions on Penalty

Member's counsel indicated that he agreed with College Counsel's submissions.

Decision on Penalty

After deliberating, the Panel accepted the Joint Submission on Penalty and made an order consistent with its terms.

The Panel determined the penalty was fair and reasonable, being neither too lenient nor too onerous and made the Order as jointly submitted by the parties, keeping in mind that the test for rejecting a Joint Submission on Penalty as articulated by the Supreme Court of Canada in *R v. Anthony-Cook* is very high.

The rules that apply to optometrists (including rules regarding OHIP billings) exist to ensure that the public is protected. Failure to maintain those rules puts patients at risk and also tarnishes the reputation of the profession. The Panel believes that the totality of the penalty order is such that it will act as a general deterrent to other members of the profession. The penalty's focus on rehabilitation will also help to ensure that the Member himself does not repeat this conduct in the future. The Panel was comforted by the fact that the Member is required to complete practice coaching to assist him in understanding the requirements regarding OHIP billing and would be required to submit to a practice inspection to ensure that he was applying the learning that he obtained through that coaching.

The Panel was also of the view that the remedial nature of the penalty appropriately took into consideration the mitigating factors in this case, including the fact that the Member had no previous findings against him, he cooperated fully with the College and pled guilty, thereby saving time and

resources and is prepared to learn from this experience and improve his practice. The Panel found that there were more mitigating than aggravating factors in this case.

At the conclusion of the hearing the Panel administered the reprimand to the Member, a copy of which is attached to this decision.

Dated this ____8th____ day of April 2024, at Toronto, Ontario.



Dr. Pooya Hemami, Chair

On behalf of:

Ms. Suzanne Allen
Dr. Natalija Ilic
Dr. Patrick Quaid
Mr. Narendra Shah

TEXT OF PUBLIC REPRIMAND

College of Optometrists of Ontario and Dr. Yunfan Zhang

Dr. Zhang, regulated health professionals are trusted to know the rules that apply to them and are expected to follow these rules.

The public trust has been violated by your conduct, even if your conduct was not intentional.

The public of Ontario particularly trusts that professionals will know and follow the rules regarding OHIP billing. Your failure to keep yourself so informed is a violation of the public's trust and your conduct reflects negatively on the entire profession.

The Discipline panel expects each member of the College to be aware of and to follow current guidelines in terms of OHIP billing and also the ability to maintain clear and accurate records.

This panel expects that you will participate fully in the coaching that has been ordered, and that the subsequent inspection of your practice will demonstrate that you have implemented that learning into your practice.

Please be aware that if any future allegations of a similar nature are brought to the attention of the Discipline Committee, the penalty in that case will be more onerous than this one.

We encourage you will make every effort to avoid those circumstances and we wish you well in the future, Dr. Zhang.