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**RECORD OF DECISION**

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**RESPONDENT:**

**JEFF LARSON**

**COMPLAINANT:**

**[REDACTED]**

**BEFORE:**

**PANEL MEMBERS:**

**Bonita Ciotka, Daphne Boechler, Ellen Baier, and Bert Yakichuk**

The complaint was heard in Saskatchewan College of Optician Discipline Committee, on May 28, 2024.

**PRELIMINARY ISSUES:**

[1] Mr. Jeff Larson ( the “Member”) became a member of the Saskatchewan College of Opticians ( the “College”) on or about July 4, 2018. He held a license to practice from the College from April 1, 2023, until March 31, 2024 and operated through his business Hyperperformance Eyewear located at 136 2<sup>nd</sup> Avenue South in Saskatoon, Saskatchewan.

[2] On November 14, 2023, the College received a complaint. The complainant purchased frames and lenses from Mr. Larson at Hyperperformance Eyewear. The lenses are progressive Lenses. The total purchase price is \$1,185 including taxes.

[3] The Professional Conduct Committee (the “Committee”) conducted investigation after the receipt of the Complaint. The Committee then forwarded the result of the investigation to the Discipline Committee. The Discipline Committee appointed four members as a panel to determine professional misconduct or professional incompetency.

[4] The hearing was held at 9am on May 28, 2024. Ms. J. Carlson appeared at the hearing on behalf of the Committee. The Committee’s witnesses testified at the hearing.

[5] The Member did not appear at the hearing. The Committee presented the Affidavit of Service that the Committee had tried to serve the Notice of Hearing to Mr. Larson by email or by registered mail. The records show that the email was sent to the email that was believed to be the Member’s and a registered mail has been sent to the Member’s address, but it was not picked up.

[6] During the investigation, a member of the Committee had two telephone conversations with the Member. The Panel is satisfied that the Member knew or should have been aware of the hearing but chose not to appear.

**GROUND AND ISSUES:**

**Facts and Evidence:**

[7] The Committee filed Written Submission with Exhibit “A”, Exhibit “B” and Exhibit “C”. Three witnesses testified at the hearing.

[8] The Complainant testified at the hearing that he ordered a pair of progressive glasses at Hyper Performance. He had problems to see things close. He also had issue with his peripheral vision with his order that he did not have with his previous pair. He went back to the store and asked the Member to fix so he could see better. The Member refused to exchange or repair but advised the Complainant to try seven more days.

[9] The Member advised that the Complainant to see a different optometrist to verify the prescription. The Complainant went to see Dr. Sharma that suggested by the Member. Dr. Sharma verified that the prescription was correct.

## RECORD OF DECISION

[10] Ms. Szabo testified at the hearing that she examined the glasses and found that the glasses don't reflect a correct P.D. measurement and the color of the tint is not prescribed.

[11] The Complainant went back to the Member's store to request the repair, but the member refused again. Then the Complainant requested a refund of the purchase price of \$1,185. The Member refused to refund.

[12] In the arguments, the Member also commented to the complainant that the Complainant wanted a refund in order to hire sex worker. He then placed the glasses in their case, returned to the Complainant and demanded that the Complainant leave his store. The Complainant left the store.

[13] The Complainant made a complaint to the College, particular to the insulting comments made by the Member. He also requested that the college helped him to get a refund from the Member.

[14] In the hearing, Ms. Kyle, a member of the Committee testified she had called the Member in the investigation after receiving the Complaint. Ms. Kyle described that the Member was rude and aggressive in the telephone conversation. Ms. Kyle notified him that the issue would proceed to the Discipline Committee. The Member had called back multiple times to harass Ms. Kyle.

[15] The Member did not appear or present any evidence before or after the hearing. Without contradictory evidence or any credibility issue of the witnesses, the Panel found on balance of probabilities, that:

- (1) the Member did not measure the P.D. for the Complainant or measure the P. D. properly.
- (2) the Member used the different color of tint to the prescription.
- (3) The Member refused to repair the glasses that the member had issues to use.
- (4) The Member was being aggressive and disrespectful when the Complainant discussed with him about the problem.
- (5) The Member made inappropriate comments to the Complaint.
- (6) The Member was not graceful and cooperative in the investigation.

### **LAWS AND PRECEDENTS:**

[16] The authority of Discipline Committee is provided by section 31 of the Opticians Act:

Section 31(1) The discipline committee is established consisting of at least three persons appointed by the council; the majority of whom are to be practicing members and one of whom is a member of the council appointed pursuant to section 9.

(2) No member of the professional conduct committee or member of the council elected or appointed pursuant to clause 8(2)(a) is eligible to be a member of the discipline committee.

(3) subject to this Act and the bylaws, the discipline committee may make rules regulating its business and proceedings.

(4) If a panel of the discipline committee is established in accordance with the bylaws, a decision of the panel has the same effect as a decision of the discipline committee.

[17] The Discipline Committee shall follow the procedure prescribed under section 32 of the Optician Act:

32(1) Where a report of the professional conduct committee recommends that the discipline committee hear and determine a formal complaint, the registrar shall, at least 10 business days before the day on which the discipline committee is to sit: (a) send a copy of the formal complaint to the member whose conduct is the subject of the hearing; and (b) serve notice on the member whose conduct is the subject of the hearing of the date, time and place of the hearing.

(2) The professional conduct committee shall prosecute or direct the prosecution of the formal complaint, but its members shall not participate in any other manner in the hearing of the formal complaint except as witnesses when required.

(3) The discipline committee shall hear the formal complaint and shall determine whether or not the member is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer any question to a court for adjudication.

(4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.

(5) The discipline committee may employ, at the expense of the college, any legal or other assistance that it considers necessary, and the member whose conduct is the subject of the hearing, at his or her own expense, may be represented by counsel.

(6) The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the discipline committee.

(7) At a hearing by the discipline committee, there is to be full right: (a) to examine, cross-examine and re-examine all witnesses; and (b) to present evidence in defence and reply.

(8) On application and payment of the appropriate fee, the local registrar of the court at any judicial centre shall issue writs of subpoena ad testificandum or subpoena duces tecum to: (a) a member whose conduct is the subject of a hearing pursuant to this Act; (b) a member of the professional conduct committee; or (c) a member of the discipline committee.

(9) Where a writ issued pursuant to subsection (8) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.

(10) Subject to The Evidence Act and section 8-2 of The Provincial Health Authority Act and notwithstanding any other Act or the regulations made pursuant to any other Act, the records of any facility operated by the provincial health authority or an affiliate, as defined in The Provincial Health Authority Act, may be brought before the discipline committee, without special order, by writ of subpoena duces tecum issued pursuant to subsection (8) and served on the chief executive officer of the provincial health authority or affiliate.

(11) Where the member whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice mentioned in subsection (1), may proceed with the hearing in the member's absence.

(12) If, during the course of a hearing, the evidence shows that the member whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the discipline committee shall notify the member of that fact.

(13) If the discipline committee proposes to amend, add to or substitute the charge in the formal complaint, the discipline committee shall adjourn the hearing for any period that the discipline committee considers sufficient to give the member an opportunity to prepare a defence to the amended formal complaint, unless the member consents to continue the hearing.

(14) The person, if any, who made the complaint pursuant to section 29:

(a) is to be advised orally or in writing by the registrar of the date, time and place of the hearing; and (b) subject to subsection (16), is entitled to attend the hearing.

(15) Subject to subsection (16), the discipline committee shall conduct all hearings in public.

(16) The discipline committee may exclude members of the public and the person who made the complaint from any part of the hearing where the committee is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing.

[18] The Professional incompetence is provided section 26 of the Act:

Section 26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

(a) continue in the practice of the profession;

or (b) provide one or more services ordinarily provided as a part of the practice of the profession; is professional incompetence within the meaning of this Act.

[19] Professional misconduct is provided under section 27 of the Act:

Section 27 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonorable, is professional misconduct within the meaning of this Act if:

(a) it is harmful to the best interests of the public or the members;

(b) it tends to harm the standing of the profession; (c) it is a breach of this Act or the bylaws;

or (d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

## **ANALYSIS AND CONCLUSIONS:**

## RECORD OF DECISION

[20] In the Service Standard of the College, an optician must: 7.11 review the patient's environment, occupation, hobbies, regular activities and/or physical factors when recommending ophthalmic lenses and frames; 7.12 take the patient's measurements as appropriate to ensure the proper function of their eyeglasses; 7.13 verify the accuracy of the patient's completed eyeglasses to ensure they are as ordered and within tolerance. Refer to the most recent version of the American National Standards Institute (ANSI) for Ophthalmic—prescription Ophthalmic Lenses Recommendations for the tolerance chart information; 7.14 Fit and adjust the eyeglasses to meet the patient's needs, making recommendations to allow for successful adaptation to eyeglasses based on the patient's visual expectations and work environments; 7.15 Record in the patient file the service received by the patient, including, but not limited to a. lens type; b. Frame details 9 make, model, colour, size0 and c. measurements, including pupillary distance, segment or ocular centrer heights; 7.16 Educate the patient on aspects of eyeglass wear, including, but not limited to, the use, expectations, limitations, adaptation period, and maintenance requirements of the eyeglasses. 7.17 If the eyeglasses are to be used as safety eyeglasses, adhere to safety standards and tolerances for personal protective eyewear.

[21] The Member did not follow the Service Standards of the College, lack of the judgment of an optician and disregard the welfare of the Complainant. The Member's conducts constitute professional incompetence under section 26 of the Act.

[22] The Member's conducts in providing the service, in the resolution of the disputes with the Complainant and in the investigation of the complaint are disgraceful, dishonorable and unprofessional, which is harmful to the standing of the profession and the best interests of the member and public.

[23] The Panel is also satisfied that the member's continuing to provide the service to the public will harm the best interests of the public and harm the standing of the profession.

[24] The Panel found that the Member is guilty of professional misconduct under section 27 of the Optician Act.

### **PENALTY:**

[25] The Discipline Committee has disciplinary powers under 33 of the Act:

(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders: (a) an order that the member be expelled from the college and that the member's name be struck from the register; (b) an order that the member's licence be suspended for a specified period; (c) an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order; (d) an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to, an order that the member: (i) not do specified types of work; (ii) successfully complete specified classes or courses of instruction; (iii) obtain medical or other treatment or counselling or both; (e) an order reprimanding the member; (f) any other order that the discipline committee considers just.

RECORD OF DECISION

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order: (a) that the member pay to the college, within a fixed period: (i) a fine in a specified amount not exceeding \$5,000; and (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and (b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member's licence be suspended.

(3) After the conclusion of its hearing pursuant to section 32, the discipline committee shall: (a) make its decision as soon as possible; and (b) within 10 business days after the decision, send to the member whose conduct is the subject of the complaint and the person, if any, who made the complaint: (i) a copy of its decision; and (ii) if the discipline committee makes an order pursuant to this section, a copy of the order.

(4) Where a member is expelled from the college or a member's licence is suspended, the registrar shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.

(5) The discipline committee may inform a member's employer of the order made against that member where that member.

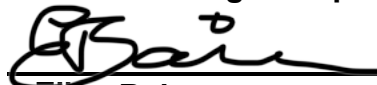
[26] The Panel found that the gravity of misconduct and incompetency of the member is serious. The Panel then order:

- (1) strike off the member's registration from the college.
- (2) a fine of \$5,000 to the Society.
- (3) pay the costs of the investigation and expense of the professional conduct committee and the discipline committee.

[27] The Panel found that the College has no authority to award the refunds or order the refunds by the Member to the Complainant. Professional boards usually do not interfere with a commercial relation between a member and its customer. The Panel recommends that the Complainant seek other remedies, through other proceedings such as small claim, consumer protection, or dispute resolution, in accordance with the laws of Saskatchewan.

DATED AT SASKATOON, SASKATCHEWAN, THIS 08th DAY OF July, 2024.

Discipline Committee of the College of Opticians

  
Ellen Baier



Bert Yakichuk , Member

RECORD OF DECISION



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Bonita Ciolka, Member



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Daphne Boechler, Member



## RECORD OF DECISION

TAKE NOTICE, that in accordance with Section 38 of *The Opticians Act*, a member may appeal a decision or any order of the discipline committee to the council by serving the registrar with a notice of appeal within 30 days after the decision or order where;

(a) the member has been found guilty of professional misconduct or professional incompetence by the discipline committee; or

(b) the member is subject to an order made pursuant to section 35.

A notice of appeal form for submission to the Council is included with this decision, together with an information sheet. The notice of appeal must be filed personally, by registered mail, or by ordinary mail, within 30 days after being served with this Record of Decision, to:

Address: Saskatchewan College of Opticians  
#13, 350 103rd Street East, Saskatoon, SK S7N1Z1

Telephone: 306-652-0769

For additional information, please contact the Council of Saskatchewan College of Opticians.