

PROVINCE OF NOVA SCOTIA

IN THE MATTER OF: The *Optometry Act*, 2005, c.43 s.1 and Regulations
 made thereunder

-and-

IN THE MATTER OF: Dr. Yves Levesque

PENALTY DECISION OF THE HEARING COMMITTEE

INTRODUCTION

1. By decision dated August 12, 2015, the Hearing Committee of the Nova Scotia College of Optometrists rendered its decision in a matter involving Dr. Yves Levesque.

2. The Hearing Committee found that Dr. Levesque breached:
 - Standards of Practice 5.1(12);

 - Standards of Practice 5.2.8(3);

 - Standards of Practice 5.2.9(2); and,

 - Standards of Practice 5.3(4).

3. The Hearing Committee also found that Dr. Levesque:
 - 1(a) Failed to practice in accordance with the current Standards of Care for the practice of optometry which includes maintaining proper records pursuant to Standards of Practice 5.6.
 - 1(b) Failed to practice in accordance with the current Standards of Care for the practice of optometry by failing to conduct a proper diagnostic testing; and,
 - 1(c) Failed to practice in accordance with the current Standards of Care for the practice of optometry by failing to refer patient to an ophthalmologist.
4. As a result of the decision dated August 12, 2015, the Hearing Committee is now tasked with a determination regarding sanctions or penalty, if any, against Dr. Levesque.

FACTORS AND CONSIDERATION

5. In considering the appropriate penalty, if any, the Committee is aware, and has considered, the following factors:
 - The protection of the public;
 - Specific deterrence;
 - General deterrence;
 - Rehabilitation;
 - Punishment;

- The nature and gravity of the proven allegations;
 - The age and experience of Dr. Levesque;
 - The presence or absence of any prior complaints or convictions;
 - The age and mental condition of the patient;
 - The impact of the incident on the patient;
 - The presence of any mitigating circumstances;
 - The need to ensure the safe and proper practice;
 - The need to maintain the public confidence in the integrity of the practice;
 - The degree to which the offensive conduct that was found to have occurred was clearly regarded as being the type of conduct that would fall outside the range of permitted conduct; and,
 - The range of sentence in other similar cases.
6. The Committee has received detailed submissions from counsel for the College and counsel for Dr. Levesque, including submissions dated October 5, 2015, November 6, 2015, and November 13, 2015. The Committee has also been made aware of an exchange of emails dated November 16, 2015.
7. The Committee has had the benefit of considering all of the evidence in this matter, its decision regarding the substance to this matter, and the detailed submissions of both parties, as well as case law presented by both parties.

FINDINGS

8. The Committee believes that it is appropriate that Dr. Levesque be sanctioned. His conduct, or lack of appropriate action, has caused serious harm. Sanctions are in order.
9. To properly protect the public, this Committee believes that conduct such as Dr. Levesque's must be sanctioned. Optometrists and the public need to know that serious legislative breach will result in serious sanction. The principles of both specific deterrence to Dr. Levesque and general deterrence to the profession as a whole, require sanction.
10. The harm caused to the patient in this case is serious. The harm's impact is significant. The resulting vision loss has negatively altered the patient's standard of living.
11. The Committee is also mindful that while Dr. Levesque defended against the allegations, as he is entitled to do, his defence was candid and credible. Dr. Levesque's testimony and explanation was straight forward.
12. The Optometry Regulations NS Reg 453/2007 as enabled by Section 19.1(p) of the *Optometry Act*, SNS 2005 c.43, provide as follows:

21(1) A hearing committee that finds an optometrist guilty of unprofessional conduct may include any of the following in the order of the committee disposing of the matter:

- (a) a reprimand of the optometrist;
- (b) a provision that the optometrist pay a fine to the College;
- (c) a provision that the optometrist be responsible for the costs of the proceedings, or a portion of the proceedings, as assessed by the hearing committee;

(d) a provision that the optometrist's licence to practise be suspended or restricted for a period of not more than 1 year on such terms and conditions as the hearing committee determines;

(e) a provision that the optometrist must undergo 1 or more of the following:

- i. treatment,
- ii. re-education,
- iii. practice enhancement;

(f) a provision that the optometrist's licence be revoked and that they be precluded from further practice.

(2) any fine or costs ordered by a hearing committee must be paid no later than 30 days after the date the order is made and, if an optometrist fails to pay the costs before the deadline, the optometrist is suspended from practising until the payment is made.

13. Having considered the facts of this matter, the factors relevant when determining appropriate penalty, and the governing legislation, the Hearing Committee makes the following finding regarding penalty.

REPRIMAND

14. Pursuant to Section 21(1)(a) of the Optometry Regulations, the Hearing Committee is of the view that a reprimand is part of an appropriate sanction. The Hearing Committee hereby orders that a reprimand be placed in the file of Dr. Levesque.

FINE

15. Pursuant to Section 21(1)(b) of the Optometry Regulations, the Hearing Committee is of the view that a fine is part of an appropriate sanction. The Hearing Committee hereby orders that Dr. Levesque pay to the College of Optometry a fine of \$10,000.00. The Hearing Committee is aware of the requirements of Section 21(2) in its consideration of the requirement of the payment of the fine.
16. In giving a serious and significant fine, the Hearing Committee is mindful of the need for specific and general deterrence and the requirement for a serious penalty for a serious mistake. The Hearing Committee is of the view that a fine of this size will provide the required message to avoid avoidable mistakes.

COSTS

17. Pursuant to Section 21(1)(c), the Hearing Committee is of the view that Dr. Levesque should be required to pay a portion of the costs of proceeding. There were ten separate allegations against Dr. Levesque, seven were proven. The Hearing Committee hereby orders that Dr. Levesque pay to the College 70% of the costs of the College.
18. The College has submitted costs of \$95,887.05. A portion of the costs relate to predecessor counsel to the College who, for entirely appropriate reasons, could not continue to act. However, the inability of previous counsel to act is not the fault of Dr.

Levesque. The Hearing Committee orders a decrease in costs applicable to the previous counsel of 50%.

19. The College used Dr. Jeffrey Buchanan-Dorrance as an expert and subsequently during the hearing, as an advisor. The Hearing Committee believes that a portion of Dr. Buchanan-Dorrance's account related to services as an expert is recoverable. The portion related to services as an advisor during the hearing is not. The Hearing Committee orders a decrease in the costs applicable to Dr. Buchanan-Dorrance of 33%.
20. The Hearing Committee finds the legitimate costs of the College as follows:
 - Total costs of the College - \$95,887.05;
 - Less half of the costs of previous prosecutor, Elizabeth Buckle;
 - Less 1/3 of the costs of Dr. Jeffrey Buchanan-Dorrance;
 - Total accepted cost of the College - \$88,198.00;
 - The Hearing Committee hereby orders that Dr. Levesque pay 70% of \$88,198.00 for total cost award against Dr. Levesque of \$61,738.00.

SUSPENSION

21. The Hearing Committee is aware of the provisions in Regulation 21(1)(d). The Committee has determined that a suspension or restriction on the licence of Dr. Levesque

is not appropriate in this case and the Committee orders no suspension or restriction on Dr. Levesque's licence.

22. The Hearing Committee did seriously evaluate the possibility of a suspension, given the nature of the harm to the patient. However, the Hearing Committee was particularly persuaded by:

- A lack of similar fact cases in which a suspension was imposed;
- Regulated professions cases in which a suspension was imposed regularly featured repeated or more egregious conduct;
- No previous record of Dr. Levesque, before or after the error;
- The "one off" nature of the error;
- The ability to accomplish the goals of specific and general deterrence, protection of the public, and punishment for the offence with the range of sanctions available to the Hearing Committee other than suspension;
- A concern that a combination of a significant fine, costs and suspension could unintentionally result in Dr. Levesque being unable to continue in practice. That would mean an effective revocation of licence in a case that did not call for revocation.

23. The Hearing Committee does not see it as necessary for the protection of the public and the other considerations on sentencing and penalty, to suspend the licence of Dr. Levesque. This is Dr. Levesque's first incident before the College. There is no other evidence of any other incidents. It has now been three years since the occurrence of this incident without any further charge or incident involving Dr. Levesque. During that three year period, Dr. Levesque has been licensed and practicing. The Hearing Committee recognizes that the impact on the patient was significant and the error of Dr. Levesque was significant. However, the Hearing Committee is mindful of the impact the reprimand, significant fine, and the significant costs award. The Hearing Committee is also aware of the potential positive impact of the Practice Enhancement Committee and believes that those measures satisfy the obligations of the *Optometry Act*.
24. The Hearing Committee believes that a fine of \$10,000.00 sends a clear message in an attempt to deter any similar conduct and provides significant punishment to Dr. Levesque because of the seriousness of this one mistake.

PRACTISE ENHANCEMENT

25. With protection of the public as a foremost concern, pursuant Section 21(1)(e), the Committee hereby orders that the College's Practice Enhancement Committee visit Dr. Levesque. The Hearing Committee orders and directs as follows:

- The Hearing Committee directs the Practice Enhancement Committee of the College of Optometry visit Dr. Levesque's practice to evaluate his record keeping and his technique for examining the retina, especially in cases involving signs and symptoms of possible retina detachment. The cost of the Practice Enhancement Committee in conducting the assessment and evaluation shall be borne by Dr. Levesque and paid to the College by Dr. Levesque within 60 days upon notice to Dr. Levesque of the costs of the visit and assessment. The Practice Enhancement Committee shall visit Dr. Levesque once in the next 12 months and any follow-up visit or evaluation as required shall be determined pursuant to the rules applicable to the Practice Enhancement Committee. Any follow-up of the evaluation or assessment or visit shall be paid by Dr. Levesque within 60 days of notice of the costs of the visit and assessment.

REVOCATION

26. The Hearing Committee is aware of the provisions of Regulation 21(1)(f) regarding the revocation of licence and do not believe revocation is appropriate in this case.

PUBLICATION

27. Pursuant to Section 43(1) and the Hearing Committee's powers under the *Optometry Act*, the Hearing Committee orders the publication of the decisions of the Hearing Committee in the College's Annual Report. The Hearing Committee also orders the decisions be published on the website of the College of Optometry and notice of the decisions be

provided once in the College's electronic newsletter with a link in the electronic newsletter to the full decision on the College's website.

28. The Hearing Committee believes that publication is a fundamental component in the appropriate conclusion of this matter. Specific deterrence, general deterrence, protection of the public and public confidence all require publication.

SUMMARY

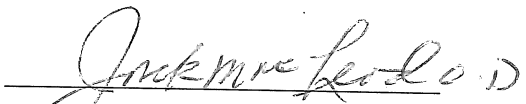
29. In summary, the Hearing Committee hereby orders the following sanction against Dr. Levesque:

- A reprimand be placed on his file;
- A fine of \$10,000.00;
- Costs payable to the College in the amount of \$61,738.00;
- Evaluation and assessment by the Practice Enhancement Committee; and,
- Publication to the decisions of the Hearing Committee as noted above.

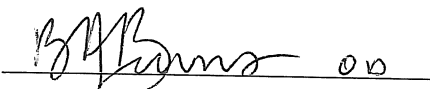
30. The Hearing Committee is very mindful of the provisions in Regulation 21(2) requiring the payment of a fine and costs within 30 days of the decision in this matter. If it was within the jurisdiction of the Hearing Committee, the Hearing Committee would have allowed a greater period of time for Dr. Levesque to pay the fine and costs. However, Section 21(2) is clear. The Hearing Committee does not have the discretion to extend the time for payment.

31. Pursuant to the *Optometry Act*, the Committee hereby directs that in addition to the publication ordered above, a copy of this decision be provided to the patient, Ms. Heather Black, to Dr. Levesque through his counsel, to the College through its counsel, and to the Board of the College of Optometry.

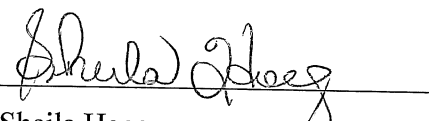
DATED this 22nd day of December, 2015.



Dr. Jack MacLeod



Dr. Barry Burns



Sheila Hoeg