

## 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

### DECISION OF THE HEARING COMMITTEE

#### *INTRODUCTION*

1.     This matter came before the Hearing Committee of the Nova Scotia College of Optometrists pursuant to Sections 35-42 of the *Optometry Act* of Nova Scotia and Sections 19-22 of the Regulations created pursuant to the *Optometry Act*. A hearing of this matter was held in Halifax, Nova Scotia on June 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup>, 2015.
2.     Prior to the Hearing, procedural conference calls were held on October 15, 2014, November 14, 2014, January 5, 2015 and June 1, 2015. In advance of the Hearing, the Hearing Committee received expert reports from Dr. Jeffrey Buchanan-Dorrence on behalf of the College of Optometrists and from Dr. Freddie Chow on behalf of the Respondent, Dr. Yves Levesque.
3.     Attached as Schedule 1 to this decision is the initial Notice of Hearing issued by the Complaints Committee of the Nova Scotia College of Optometrists. The Complaints Committee referred the following allegations against Dr. Yves Levesque:

1. That while engaged in the practice of optometry you engaged in unprofessional conduct and conduct unbecoming of the profession contrary to the *Optometry Act* and to the Regulations created pursuant to the *Optometry Act* in that you failed to comply with the laws, regulations, standards and Code of Ethics of the profession by the following conduct:
  - (a) failing to practice in accordance with the current standards of care for the practice of optometry;
  - (b) failing to practice in accordance with the current standards of care for the practice of optometry by failing to conduct proper diagnostic testing of a patient after the patient presented with symptoms which could be indicative of significant retinal illness;
  - (c) failing to practice in accordance with the current standards of care for the practice of optometry by failing to refer a patient to an ophthalmologist after the patient presented with symptoms with could be indicative of significant retinal illness; and
  - (d) failing to comply with the following sections of the Nova Scotia College of Optometrist's Standards of Practice: sections 5.1(12)(13), 2.2.8(1)(3), 5.2.9(1)(2), and 5.3(4).
  
4. With the referral from the Complaints Committee, the Hearing Committee met to hear evidence and submissions from Dr. Levesque and the College of Optometrists. The Hearing Committee received and reviewed detailed witness testimony from five witnesses:

- The Complainant, Heather Black;
  - Ms. Black's family physician, Dr. Andrew Blackadar;
  - Expert for the College, Dr. Jeffrey Buchanan-Dorrence;
  - The Respondent, Dr. Yves Levesque; and,
  - Expert for Dr. Levesque, Dr. Freddie Chow.
5. The Hearing Committee also considered numerous exhibits filed by both parties and detailed written submissions filed post-hearing, on behalf of Dr. Levesque, dated July 5<sup>th</sup> and July 17<sup>th</sup>, 2015 and on behalf of the College of Optometrists dated July 13, 2015.

***UNCONTESTED FACTS***

6. The Hearing Committee is tasked with hearing and determining matters referred to it by the Complaints Committee contained at Schedule 1 attached to this decision. In doing so, the Hearing Committee had the benefit of a number of uncontested facts.
7. Ms. Heather Black ("Ms. Black"), the Complainant in this matter, visited the optometrist office of a Dr. Yves Levesque ("Dr. Levesque") in Liverpool, Nova Scotia on three occasions relevant to this matter, July 19, 2011, August 8, 2011 and August 16, 2011.
8. Unhappy with the results at Dr. Levesque's office, Ms. Black attended at her family physician, Dr. Andrew Blackadar on August 19, 2011, reporting a change in her right eye, specifically, significantly decreased vision. Dr. Blackadar reports that Ms. Black stated she had a dramatic drop in her acuity and reduced depth perception when golfing. She had mild supraorbital pain. Ms. Black reported to Dr. Blackadar that she had been to

her optometrist and reported having a dilated exam, three visits and a new prescription for her glasses.

9. Dr. Blackadar, a family physician and not an optometrist, felt that given the facts presented to him on August 19, 2011, Ms. Black needed an urgent consultation. Dr. Blackadar telephoned the ophthalmology resident on call at the Victoria General Hospital in Halifax, Nova Scotia and immediately referred Ms. Black for a consultation.
10. On August 22, 2011, Ms. Black attended the Victoria General Hospital and was seen by ophthalmologist Dr. John Dickinson. Dr. Dickinson immediately conducted eye surgery and diagnosed a right macula off-retina detachment. In straight-forward terms, Dr. Dickinson saw Ms. Black on August 22, 2011 and diagnosed a vision threatening retinal detachment in Ms. Black. He immediately performed eye surgery.
11. Over the course of late 2011 and 2012, Ms. Black had several other eye surgeries. Unfortunately, they have not been particularly successful. Ms. Black now suffers from a 75% vision loss in her right eye. The cause of her vision loss is retinal detachment. As described by the College's expert, Dr. Jeffrey Buchanan-Dorrence ("Dr. Buchanan-Dorrence") in his report dated July 28, 2014:

Retinal detachment is a sight threatening disorder characterized by the detachment of the sensory retina from the underlying tissues. Depending on severity, temporary or permanent vision or visual field loss can occur. If the detachment involves the macula, loss is generally more severe. The extent of vision loss can be limited by timely surgical intervention. Timely intervention can decrease the loss of vision or in many cases improve vision to or close to what it was before detachment.

***ADDITIONAL FINDINGS OF FACT***

12. In reviewing this matter, it was of significant importance for the Hearing Committee to determine what occurred on each of Ms. Black's visits to Dr. Levesque's optometrist office.

**JULY 19, 2011**

13. Ms. Black visited Dr. Levesque's office on July 19, 2011. Evidence presented to the Hearing Committee includes the following regarding the July 19, 2011 visit:

- Handwritten note of Ms. Black:

Told Dr. Levesque of shadow and retinal imaging done. He said if I see flashes of light to go to hospital as I had the beginning of a detached retina.

- Complaint of Ms. Black, July 19, 2011:

Visit to office of Dr. Levesque to tell him I had shadow coming over right eye. Retinal imaging performed. He said I had the beginning of detached retina and if I saw flashes of light in future to go to hospital.

- Response to complaint by Dr. Levesque:

On July 19<sup>th</sup> she came in complaining of more floaters and these were associated with some flashes.

14. During the hearing of this matter, Dr. Levesque retreated from his response to the College in so far as it related to his statement that Ms. Black was seeing flashes on July 19, 2011. While testifying, Dr. Levesque reviewed his chart notes and testified that there is no notation or record of Ms. Black reporting flashes on July 19, 2011.

15. Both Dr. Levesque and Ms. Black testified at length regarding the issue of flashes. In so far as the visit of July 19, 2011 is concerned, the Committee is particularly persuaded by the testimony of both Dr. Levesque and Ms. Black that Dr. Levesque advised Ms. Black on July 19, 2011 that if she saw flashes of light in future, to go to hospital. When this uncontested advice is combined with Dr. Levesque's testimony that Ms. Black did not say she saw flashes on July 19, 2011, the Hearing Committee is persuaded and finds as fact that Ms. Black did not report flashes of light on July 19, 2011. It would be incongruous for Ms. Black to report flashes, and Dr. Levesque to advise, if you see flashes, go to the hospital.
16. During the July 19, 2011 visit, Dr. Levesque did dilate Ms. Black's eyes and conducted the appropriate indirect examination through Ms. Black's dilated pupils. Dr. Levesque diagnosed and advised Ms. Black that she had a posterior vitreous detachment (PVD). For patients with PVD, there is an increased risk of vision threatening retinal detachment but, distinct from a retinal detachment, a posterior vitreous detachment (PVD) is not itself a threat to Ms. Black's vision. The Committee finds as fact that after the dilated exam of July 19, 2011, there was no evidence that Ms. Black's retina had detached, or was detaching, and no evidence to contradict Dr. Levesque's diagnosis of a PVD. In addition to advising Ms. Black to go to the hospital if she saw flashes, performing a dilated exam, and diagnosing PVD, Dr. Levesque also gave Ms. Black a new prescription for glasses because of a minor change in her vision.

#### **AUGUST 8, 2011**

17. Unfortunately, things deteriorated quickly for Ms. Black. On August 8, 2011, she visited the office of Dr. Levesque to pick up new glasses. In her complaint to the College, Ms. Black states:

August 8/11 – I pick up new glasses and ask to see Dr. Levesque as I was having flashes. He would not see me but told office girls to tell me not to worry. They said I had vitreous detachment.

18. There is a noteworthy conflict between Ms. Black's complaint to the College dated October 19, 2012 and her handwritten notes created one year earlier. Her handwritten notes state:

August 8/11 – I picked up glasses and asked to see Levesque. He did not see me but told girls in office I had no reason to worry!! They said I had vitreous detachment. Paid \$99 new glasses.

19. Contrary to her complaint to the College, dated October 19, 2012, Ms. Black's earlier handwritten notes do not state:

... as I was having flashes. ...

20. During her testimony, Ms. Black testified that she went to Dr. Levesque's office on August 8<sup>th</sup> without an appointment to pick up her glasses. Ms. Black testified directly that she mentioned to the staff members in Dr. Levesque's office that she was seeing "flashes of light". Ms. Black testified that the "girl" went to the back of the office and she could hear the staff member speaking to Dr. Levesque. Dr. Levesque said to his staff member that he could not see Ms. Black and that Ms. Black had a vitreous detachment. The staff member returned to Ms. Black and wrote "vitreous detachment" on a piece of paper and handed it to Ms. Black.
21. The evidence of Ms. Black regarding the August 8, 2011 visit to Dr. Levesque's office is uncontested. The staff member from Dr. Levesque's office was not called to testify. Dr. Levesque did not speak directly to Ms. Black on August 8, 2011 or examine her in any way. There is no chart notation regarding her visit to pick up her glasses or her statements to Dr. Levesque's staff member. The Hearing Committee is left with the uncontested evidence of Ms. Black that she attended the office of Dr. Levesque on

August 8, 2011, and, among other things, told the staff members of Dr. Levesque that she was seeing “flashes of light”.

22. Ms. Black’s June 2015 testimony is consistent with her October 2012 complaint to the College. It is inconsistent with her earlier August/September 2011 handwritten notes. Ms. Black was tested significantly in cross-examination on this issue. While admitting that memory is sharper closer to the event, when asked directly in cross-examination whether or not she recalled if she said to Dr. Levesque’s staff that she was seeing flashes, Ms. Black stated, “yes, I am certain.”
23. Ms. Black’s evidence in this regard was credible. Her testimony on cross-examination was unwavering. There is no contradictory evidence before the Committee other than the omission in Ms. Black’s handwritten note.
24. The Committee finds as fact that Dr. Levesque counselled and warned Ms. Black on July 19, 2011 that if she saw flashes she should go to the hospital. The counsel or warning from Dr. Levesque to Ms. Black on July 19, 2011 was clearly a warning to take immediate action if she saw flashes. Ms. Black has provided uncontested evidence that she saw flashes on or around August 8, 2011 and went to Dr. Levesque’s office. Ms. Black was credible in this testimony. The Hearing Committee finds as fact that in response to Dr. Levesque’s warning of July 19, 2011, Ms. Black attended at his office on August 8, 2011 and reported she was seeing flashes. Dr. Levesque did not examine her in any way and Ms. Black was left to her own devices with a slip of paper from a staff member that said “vitreous detachment”.

#### **AUGUST 16, 2011**

25. It is uncontested that Ms. Black returned to Dr. Levesque’s office on August 16, 2011. In her complaint she reports:



August 16/11 – Back to Dr. Levesque. Had lost sight in right eye. Retinal imaging done again. He told me I had a migraine. Not to worry. But to come back August 22/11. Not charged for visit.

26. Ms. Black's handwritten note of a year earlier is almost identical. Dr. Levesque, in his response to the College stated:

On Tuesday, August 16, 2011, I was fully booked but we were able to squeeze her in our schedule that day. She complained of a bad headache for the last two days and of **prism-like light** for the last month. **The vision was down to 6/15 in her right eye.** There was no change for her left eye. **Fundus exam by direct ophthalmoscopy did not reveal any anomaly that would explain the decrease in her vision.** I told her that it was possible that she was just getting migraines but that I was going to refer her to Dr. De Saint Sardos in Bridgewater since **I was not comfortable with her decreasing vision.** This was left as a priority for me to do my next working day which was Monday. I also made an appointment for her to come back to see me Monday, August 22, 2011 so that I could do a follow up exam. **[emphasis added]**

27. Ms. Black testified regarding the August 16, 2011 visit in detail. She testified that she could see very little out of her right eye. Her visual acuity had dropped significantly. Ms. Black testified that Dr. Levesque said that she had a migraine. Ms. Black, Dr. Levesque and Dr. Levesque's charts all confirm that Dr. Levesque did not dilate Ms. Black's right eye and did not conduct a dilated examination.
28. After her visit to Dr. Levesque's office on August 16, 2011 and Dr. Levesque's diagnosis of a migraine, Ms. Black was so concerned about the decrease in her vision of her right eye that she immediately saw her family doctor, Dr. Blackadar. Dr. Blackadar immediately referred her to an ophthalmologist in Halifax, Nova Scotia. She was diagnosed with a detached retina and almost immediately underwent eye surgery.
29. The Committee finds as fact that Dr. Levesque was advised by Ms. Black on the August 16, 2011 visit that she was seeing "prism-like lights". The Committee finds that on

August 16, 2011, Ms. Black clearly conveyed to Dr. Levesque that she was seeing some form of lights. The Committee finds that at the Tuesday, August 16, 2011 visit, Dr. Levesque either was, or should have been aware, that he had diagnosed Ms. Black with posterior vitreous detachment one month earlier on July 19, 2011. Dr. Levesque was either aware or should have been aware that patients suffering from posterior vitreous detachment are at an increased risk of detached retina. A significant symptom of a detached retina is flashes of light. The Committee finds as fact, rather than dilating Ms. Black's pupil to determine the cause of the lights, Dr. Levesque scheduled Ms. Black for a follow up appointment almost one week later on Monday, August 22, 2011.

30. The Committee notes with concern that Dr. Levesque's response to the College reflects his discomfort with Ms. Black's loss of visual acuity to such an extent that it warrants an ophthalmological referral but Dr. Levesque does not dilate. The dilation would have allowed Dr. Levesque to determine if the referral was urgent or not.
31. Both Dr. Levesque and Ms. Black also testified that at the August 16, 2011 visit, Ms. Black advised, and Dr. Levesque was aware, that Ms. Black has a significant, unexplained loss of vision in her right eye. The loss of vision was so significant that Dr. Levesque, in his reply to the College, commented "I was not comfortable with her decreasing vision".
32. The Committee finds as fact that at the August 16, 2011 visit, Dr. Levesque was aware that Ms. Black has just been diagnosed with PVD in her right eye; had a sudden, unexplained loss of vision in her right eye and was seeing prism like lights in her right eye. In response to these symptoms, Dr. Levesque did not perform a dilated exam.
33. Of helpful guidance for the Hearing Committee were the expert reports of both the expert for the College and the expert for Dr. Levesque. In his report dated July 28, 2014, Dr. Buchannan-Dorrence states at page 6 – 7 of his report:

When a patient sees flashes or a shadow over their vision and has a decrease in vision, a dilated examination needs to be performed.

This was done on July 19, 2011, revealing no retinal tears or detachment per Dr. Levesque's correspondence and records. ...

When a patient returns with concerns and new flashes, the patient's vision and eyes should be re-examined. ...

When she returned with more vision loss August 16, 2011, which she described as "lost sight in the right eye", Dr. Levesque noted a decline in vision, "prisms in vision" and headaches. ...

...

... Ideally, he should have dilated this patient based on her history and his own findings of decreasing acuity and of the partial vitreous detachment detected on July 19<sup>th</sup>.

...

Re: dilation, Section 5.2.9 of the *Standards of Practice* is clear on the need to dilate and examine with indirect ophthalmoscopy ... her loss of vision and her symptoms were requirements to investigate further.

34. Importantly, on this fundamental point, the expert for Dr. Levesque agrees. At page 10 of his report dated June 9, 2015, Dr. Freddie Chow states:

... **While I am of the conclusion that a dilated examination on the August 16, 2011, ought to have been performed**, one must consider what the possible differential diagnosis based on the clinical presentation and evidence that was available to Dr. Levesque at the time. **[emphasis added]**

35. In cross-examination, Dr. Chow was asked:

Q: Is it your opinion that Dr. Levesque should have done a dilated exam on August 16<sup>th</sup>?

A: I would have done a dilated exam.

36. It is the finding of the Committee that both Dr. Buchanan-Dorrence on behalf of the College, and Dr. Chow on behalf of Dr. Levesque agree, that Dr. Levesque should have done a dilated exam of Ms. Black on August 16, 2011. It is uncontested in the evidence and the Committee finds as fact that Dr. Levesque did not do a dilated exam of Ms. Black on August 16, 2011.
37. In reviewing this matter, the Committee is also aware that the review was not made easy by Dr. Levesque's record keeping. The Committee finds as fact, the following:
  - Dr. Levesque's July 19, 2011 chart notes do not mention counselling of any nature despite significant subsequent evidence of counselling.
  - Ms. Black visited Dr. Levesque's office on August 8, 2011, spoke to staff, staff spoke to Dr. Levesque and staff spoke to Ms. Black. None of these conversations appear in Dr. Levesque's records.
  - Dr. Levesque conducted an FDT field test, but the test results are not contained in his chart notes.

### ***STANDARDS OF PRACTICE***

38. Dr. Levesque is alleged to have breached the following *Standards of Practice* of the Nova Scotia College of Optometrists:

5.1(12)

#### **5.1 Comprehensive Ocular Visual Assessment**

Exemplary professional judgement is necessary to obtain sufficient patient information to make clinical decisions and provide appropriate care. This initially involved obtaining comprehensive information to facilitate care.

Periodic subsequent assessments are conducted in consideration of the previously obtained information. New information is obtained to ensure accuracy and relevancy, while earlier information and data is confirmed or considered to maintain appropriate perspective in the patient's care.

An oculo-visual patient assessment shall include, but not be limited to, the following procedures:

...

(12) Internal examination of the posterior segment, including indirect viewing of the peripheral fundus through a dilated pupil when indicated. Records must include the optic disc/description and cup to disc ratio, condition of the lens and vitreous, vascular and macular integrity, and peripheral retinal evaluation.

(13) Visual field assessment, when indicated by history, signs or symptoms. Confrontation fields are considered a gross screening procedure. If indicated by case history, symptoms or test results, computer automated or Goldmann visual field testing is required.

...

#### **5.2.8 Specific Supplement Assessments**

Specific assessments are undertaken to respond to particular situations, including, but not limited to:

5.2.8 Other presentations for specific or followup assessments, where the optometrist obtains:

(1) Relevant history specific to the present complaint.

...

(3) Assessment of function or structure relevant to the presenting complaint.

...

5.2.9 With respect to dilation and cycloplegia, an indirect ophthalmoscope or some method that provides verifiable

equivalent information must be used when viewing the peripheral fundus.

Some indications for pupillary dilation are:

- (1) Sudden loss of visual field.
- (2) Flashes and floaters of acute onset.
- ...

### **5.3(4) Diagnosis**

Optometrists use the information about a patient obtained in their assessments to:

- (4) Identify the cause(s) of the patient's condition(s).

39. The Notice of Hearing also alleges failure to practice in accordance with the current Standards of Care (1(a)); failing to conduct proper diagnostic testing (1(b)); failing to refer a patient to an ophthalmologist after patient presented with symptoms indicative of retinal illness. The Committee is of the view that in addition to stating above, allegation 1(a) encompasses *Standards of Practice* 5.6 Records:

### **5.6 Records**

Optometrists maintain a record of their care of each patient to allow accurate recall of prior findings, analysis, diagnosis, advice and management plans.

## ***SUMBISSIONS/LAW***

40. The Committee had the benefit of detailed submissions filed on behalf of both Dr. Levesque and the College. As highlighted by counsel for Dr. Levesque, the Committee finds that the appropriate Standard of Proof is contained in *FH MacDougall* [2008] S.C.C. 53 where the Supreme Court of Canada determined that the Standard of Proof is on the balance of probabilities. The Committee is required to determine whether it is

more likely than not that an event occurred. The evidence must be scrutinized with care and always be sufficient and clear, convincing and cogent to pass the balance of probabilities test. The Committee is also aware of Nova Scotia Court of Appeal in *Osif v. College of Physicians (N.S.)*, 2009 N.S.C.A. 28 at paragraph 112, in which the Nova Scotia Court of Appeal determined that the Standard of Proof is on the balance of probabilities and that the evidence is to be scrutinized with care and must be clear, cogent and convincing.

41. In applying the burden of proof to the facts of this case, the Hearing Committee is particularly persuaded by the decision of the Nova Scotia Court of Appeal in *Dahwan v. College of Physicians and Surgeons*, 1998 N.S.C.A 83:

. . . “Professional misconduct” like “negligence” can only be defined in general terms. Specific applications of the principle to a given set of facts takes place each time a committee is called upon to make a determination whether conduct is or is not professional misconduct.

42. The Committee is also persuaded by submissions on behalf of the College regarding *Salway v. Association of Professional Engineers and Geoscientists of British Columbia* 2010 B.C.A 94, when the British Columbia Court of Appeal held:

. . . The pre-Dunsmuir decisions relied on by the Respondent, including *Reddoch* no longer set the standard for professional misconduct as conduct that is dishonourable, disgraceful, blatant or cavalier. Rather, it is the disciplinary body of the professional organization that sets the professional standards for that organization. So long as its decision is within a range of reasonable outcomes – i.e. it is justified, transparent and intelligible – it is not for courts to substitute their view of whether a member’s conduct amounts to professional misconduct.

43. The Committee accepts its duty at law to review the evidence to determine if there is clear, cogent and convincing evidence of a breach of the Standards of Practice or professional standards set out by the Nova Scotia College of Optometrists.

***DETERMINATION OF THE HEARING COMMITTEE***

44. The Committee has no concerns with Dr. Levesque's level of care on July 19, 2011. The care met the standard of a reasonably competent professional optometrist.
45. The Committee does have concerns with Dr. Levesque's level of care on August 8, 2011. Ms. Black presented at Dr. Levesque's office complaining of flashes of light. Dr. Levesque, or his staff as his agents, had a duty to investigate further. They did not. However, the Committee finds that there is insufficient evidence to determine that Dr. Levesque failed to meet the standards of a reasonably competent professional optometrist or breached the *Standards of Practice*. The Committee has only Ms. Black's testimony regarding her statement to a staff member and her conflicting early handwritten note. The Committee finds that it has insufficient, clear and cogent evidence for a finding of failing to meet the standard of care of a reasonably competent professional or finding of breach of the *Standards of Practice*.
46. The Committee does have significant concerns with Dr. Levesque's level of care on August 16, 2011. It is the finding of the Committee that there is clear and cogent evidence that Dr. Levesque has not met the standard of a reasonably competent professional on August 16, 2011. Dr. Levesque breached the *Standards of Practice* of the Nova Scotia College of Optometry on August 16, 2011.
47. The Committee finds:
- Ms. Black presented with a significant, unexplained loss of visual acuity;
  - Ms. Black described seeing prisms of light. While prisms of light are not flashes of light more commonly associated with a detached retina, the patient's description should not be the deciding factor in diagnosis. The optometrist must investigate.



- Dr. Levesque knew Ms. Black had just been diagnosed with PVD and was therefore at increased risk of retinal detachment.
  - Dr. Levesque diagnosed a migraine in a patient without a history migraines.
  - Dr. Levesque was uncomfortable enough with Ms. Black's eye health to refer Ms. Black to an ophthalmologist, but did not conduct the required examination to determine the urgency of that referral.
  - The Committee finds, consistent with the expert opinions of Dr. Buchanan-Dorrence and Dr. Chow, and the *Standards of Practice*, that Dr. Levesque should have conducted a dilated exam on Ms. Black on August 16, 2011.
48. Dealing with each allegation contained in the Notice of Hearing dated June 6, 2013 from the Complaints Committee, and starting with the specific allegations contained in allegation 1(d), the Committee sets out its findings below.
49. Standards of Practice 5.1(12) – The Committee finds as fact that Dr. Levesque did not conduct an indirect viewing of the peripheral fundus through a dilated pupil on August 16, 2011. That was a breach of the Standards of Practice 5.1(12). Dr. Levesque had previously diagnosed Ms. Black with PVD. The Committee finds as facts that Ms. Black mentioned directly to Dr. Levesque that she was seeing prisms of light. As confirmed by Drs. Buchanan-Dorrence and Chow, Dr. Levesque should have dilated Ms. Black's pupil to properly examine why she was seeing lights and had such a sudden loss of visual acuity. The Committee finds as facts that Dr. Levesque could not rely on Ms. Black to distinguish between “prisms of light” typical of a migraine or “flashes of light” typical of retinal detachment. The Committee finds that Dr. Levesque should have conducted the appropriate examination including examination by indirect ophthalmoscopy through a dilated pupil.

50. The Hearing Committee finds that there is insufficient evidence to support a breach of Standards of Practice 5.1(13).
51. The Hearing Committee finds that there is insufficient evidence to support a finding of breach of the Standards of Practice 5.2.8(1).
52. The Hearing Committee finds that there is sufficient evidence to support a finding of breach of Standards of Practice 5.2.8(3). Ms. Black presented with a complaint of prisms of light. A reasonably competent optometrist cannot rely on the patient to distinguish between prisms of light and flashes of light. To meet the required Standard of Care, Dr. Levesque should have conducted a dilated examination to rule out flashes of light indicative of a vision threatening retinal detachment.
53. The Hearing Committee finds that there is insufficient evidence to support a finding of breach of the Standards of Practice 5.2.9(1).
54. The Hearing Committee finds that there is sufficient evidence to support a finding of breach of Standards of Practice 5.2.9(2). There was evidence of flashes of acute onset. Pupillary dilation was indicated. Dr. Levesque breached 5.2.9(2) when he did not dilate.
55. The Hearing Committee finds that there is sufficient evidence to support a finding of breach of Standards of Practice 5.3(4). Ms. Black presented with a sudden and significant loss of visual acuity. She suddenly could not see out of her right eye. Dr. Levesque did not identify the cause of this condition or conduct the examination that would have identified the cause.
56. Dealing with the more general allegations contained in Clauses 1(a), 1(b) and 1(c) of the Notice of Hearing dated June 16, 2013, the Committee finds that there is clear and cogent evidence that Dr. Levesque breached the *Standards of Practice* and did not conduct himself as a reasonably competent professional optometrist by:

1(a) failing to practice in accordance with the current Standards of Care for the practice of optometry;

1(b) failing to practice in accordance with the current Standards of Care for the practice of optometry by failing to conduct proper diagnostic testing of a patient after the patient presented with symptoms which would be indicative of significant retinal illness.

1(c) failing to practice in accordance with the current Standards of Care for the practice of optometry by failing to refer a patient to an ophthalmologist after the patient presented with symptoms which could be indicative of significant retinal illness.

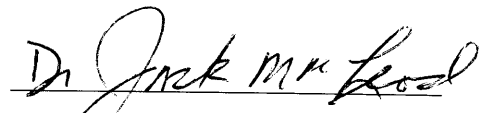
57. The Committee finds that paragraph 1(a) of the Notice of Hearing of June 6, 2013 includes requirements to conduct practice consistent with the *Standards of Practice*, including 5.6, Records. The Committee finds that there is clear and cogent evidence that Dr. Levesque did not properly maintain a record of care for Ms. Black including:

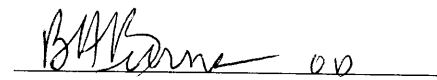
- 5.6(2) the date of visits;
- 5.6(3) the patient's case history;
- 5.6(4) the assessment procedures used and results obtained;

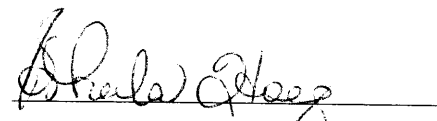
58. In summary, it is the finding of this Committee that there is clear and cogent evidence that Dr. Levesque has failed to meet the standard of a reasonably competent professional and has breached the *Standards of Practice*, including 5.1(12); 5.2.8(3); 5.2.9(2); 5.3(4); and engaged in unprofessional conduct as described in allegation 1(a); 1(b); 1(c) of the June 6, 2013 Notice of Hearing.

59. As discussed with the parties at the conclusion of this Hearing on June 17, 2015, given the finding of the Committee that Dr. Levesque has breached the *Standards of Practice*, and engaged in unprofessional conduct, the Chair of the Committee will conduct a conference call with the parties to set dates to allow the Committee to hear from the parties regarding appropriate sanctions.

DATED this 12 day of August, 2015

  
Dr. Jack MacLeod

  
Dr. Barry Burns

  
Sheila Hoeg