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## CHARTER CHALLENGE

### Optometrists face a variety of penalties for practising at eyeglass-retailer locales

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November 27, 2007

**ROSE SIMONE**  
RECORD STAFF

WATERLOO

Four local optometrists are involved in a charter challenge over Ontario rules that prohibit them from forming a business alliance with a large eyeglass retailer.



PETER LEE, RECORD STAFF

Iris, The Visual Group, a Canada-wide eye-care chain, launched the legal action after the College of Optometrists of Ontario started disciplinary proceedings against Daryan Angle, Patrick Quaid, Daniela Bugescu and Daniel Cunningham.

The college notified the optometrists of the disciplinary action shortly after they started practising at new Iris locations in Waterloo and Guelph.

Iris, a privately owned company based in Toronto, says the college's rules violate the optometrists' rights to freedom of association under the Charter of Rights and Freedoms.

The disciplinary action is a disappointment, says Angle, a 30-year-old who co-owns an Iris eye-care centre in downtown Waterloo.

The 2,700-square-foot centre, which opened on King Street in January, is equipped with state-of-the-art diagnostic and computer equipment and has a selection of about 1,000 eyeglass frames from the major fashion brands.






Iris opened a similar eye-care centre in Guelph in April.

"It is upsetting that the college would initiate this action based on a business issue and not a patient-care issue," Angle says.

"We firmly believe that we are delivering the best care possible," he adds.

The optometrists face a variety of penalties, including having their certificates of registration to practise revoked or suspended.

Valerie Browne, the office and membership director for the College of Optometrist, said the professional regulations under the Ontario Drug and Pharmacies Regulation Act were designed to ensure that optometrists remain independent and the public is protected against conflicts of

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interest.

The regulations allow independent optometrists to sell eyeglasses, contact lenses and other products as well as write prescriptions.

But they can't work for big companies that sell eyeglasses and other products and have registered opticians on staff who fit people for eyeglasses and contact lenses. Also, under the current rules, an optometrist can't hire a registered optician, nor can an optician hire an optometrist.

"It is a conflict to engage in the practice of optometry in association with anyone other than another optometrist or medical practitioner in Ontario," Browne said.

The regulations ensure that optometrists are not under undue pressure or perceived pressure to prescribe eyeglasses or other products for a company that operates on a retail model.

Browne said some changes are being proposed to the Ministry of Health that would allow optometrists to work as independent contractors in association with opticians, but even under that amendment, working for an outside business would not be accepted.

Angle says the college's rules don't make sense because optometrists are in business and selling eyeglasses, contact lenses and eye products and services in private practices now.

"We don't feel there is any more pressure on us than there is for an optometrist with his own practice, who has to pay bills, pay staff and pay overhead," he says. "That is just as much pressure."

Angle argues that optometrists at Iris are more free to focus on patient care because the company takes care of business matters such as purchasing and marketing.

Iris centres use the latest technology for diagnosing eye problems such as glaucoma, which helps optometrists provide the best care, he adds.

Angle, who practised in an Iris location in British Columbia before coming to Ontario, says collaboration between optometrists and registered opticians gives people a better standard of care.

As a 50 per cent shareholder of the Iris centre in Waterloo, Angle gets 97.5 per cent of the fees for eye exams he does at the Iris locations in Waterloo and Guelph. The profits from the sale of eyeglasses and other eye-care products are divided between Angle and Iris.

In Guelph, optometrists Patrick Quaid and Daniela Bugescu are 25 per cent owners of that location, with Iris owning the rest.

The fourth optometrist involved in the action, Daniel Cunningham, is not an owner, but does eye exams as an independent contractor, mainly in Waterloo but also occasionally in Guelph.

Angle says the disciplinary action came as a surprise.

"We had been in open communication with the college for up to two years prior to opening here, but around the time we opened, that communication came to an end," he says. "There were several months of asking for dialogue and getting no response and then suddenly this action came upon us."

Browne says the college has a responsibility to uphold the regulations still on the books.

The college's reasons for taking action have nothing to do with the business model or fear that it will lead to unfair competition for independent optometrists, she says.

"The college does not deal with market forces," Browne says. "We don't deal with how many optometrists there should be or things like competition issues. We are here in the public interest and the regulations we uphold are in the public interest."

Angle says the Iris model is accepted by the optometry colleges in Quebec, Alberta and British Columbia, where its centres operate successfully, with satisfied patients and customers.

British Columbia had rules like Ontario's, but the Supreme Court overturned them in 1997, ruling that they contravene the charter.

Iris has hired the Toronto law firm Lenczner Slaght Royce Smith Griffin LLP to make a similar case in Ontario.

Angle says the Iris model fits the collaborative approach to health care advocated by the Ministry of

Health.

"We hope the college will recognize the value of our model and support what the ministry recommends in terms of collaborative care," he says.

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