

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

October 4, 2005

AT THE COLLEGE OF OPTICIANS OF ONTARIO

Between:

College of Opticians of Ontario

-and-

Mr. Shailesh Harjivan Jobanputra, C-1696

REASONS FOR DECISION & PENALTY

Origin of the Case:

The Complaints Committee of the College of Opticians of Ontario, pursuant to section 26 of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, referred specified allegations of professional misconduct against Mr. Shailesh Harjivan Jobanputra, related to complaints by Mr. Malcolm McIntosh and Mr. Paul Reist; to the Discipline Committee of the College of Opticians of Ontario.

The Allegations:

It is alleged that, with respect to the complaint by Mr. McIntosh, Mr. Jobanputra committed acts of professional misconduct as defined in section 1, paragraphs 2, 21, 23, 24 and 28 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O., 1991 c.34 (the "Act") in that, on or about March 25, 2003, and June 10, 2003, Mr. Jobanputra:

- (a) contravened a standard of practice of the profession;
- (b) falsified records relating to his practice;
- (c) signed or issued, in his professional capacity, documents that he knew or ought to have known contained false or misleading statements;
- (d) submitted an account or charge for services that he knew or ought to have known was false or misleading; and
- (e) engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

The particulars of these allegations are:

- (i) On or about March 25, 2003, Mr. Jobanputra performed refractometry on Ms. Shelley Hillgartner, at Eyeland Optical, 1005 Ottawa Street North, Stanley Park Mall, Kitchener, Ontario, (“Eyeland Optical”), contrary to the standard of practice and directive of the College of Opticians of March 9, 2001, which was disseminated to members on or about March 14, 2001, and which prohibited members from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians had been developed and adopted; thus engaging in conduct that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonourable or unprofessional. Furthermore, he performed refractometry on Ms. Hillgartner as part of an eye examination conducted by him for the purpose of creating a false patient record;
- (ii) On or about March 25, 2003, Mr. Jobanputra created a false patient record for Ms. Hillgartner in that:
 - (a) he falsified a receipt and invoice for non-prescription sunglasses by indicating on the receipt and invoice a separate cost for frames and lenses, suggesting that he had dispensed one pair of prescription eyeglasses, rather than the eight pair of non-prescription sunglasses that he actually sold;
 - (b) he completed and signed a Manulife Financial Group Benefits claim form for prescription eyeglasses allegedly dispensed to Ms. Hillgartner; when he had, instead, sold her non-prescription sunglasses; and
 - (c) he prepared, without being authorized to do so, or arranged for Dr. L.M. Niranjan to prepare, a prescription for eyeglasses for Ms. Hillgartner that was false or misleading in that the prescription purported to have been signed by Dr. Niranjan and prepared on his prescription pad even though he had not examined Ms. Hillgartner and had never had a doctor-patient relationship with her. This prescription was prepared for the purpose of creating a false record indicating that Mr. Jobanputra had dispensed prescription eyeglasses to Ms. Hillgartner; and
- (iii) On or about June 10, 2003, when confronted by Mr. Malcolm McIntosh from Manulife Financial with respect to the falsified receipt and invoice and claim form, Mr. Jobanputra attempted to mislead Mr. McIntosh by presenting him with the falsified invoice and receipt and claiming that Ms. Hillgartner had received prescription eyeglasses from Mr. Jobanputra.

It is further alleged that, with respect to the complaint by Mr. Reist, Mr. Jobanputra committed acts of professional misconduct as defined in section 1, paragraphs 2, 21, 23,

26 and 28 of Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c. 34 {the “Act”} in that, on or about April 15, 2002, June 12, 2003 and September 26, 2003 Mr. Jobanputra:

- (a) contravened a standard of practice of the profession;
- (b) falsified records relating to his practice;
- (c) signed or issued , in his professional capacity, documents that he knew or ought to have known contained false or misleading statements;
- (d) contravened section 27 of the *Regulated Health Professions Act*, S.O. 1991, c. 18 (the “RHPA”) by performing the controlled act of prescribing eyeglasses without being authorized by a health profession act to do so; and
- (e) engaged in conduct in the course of practicing opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonourable or unprofessional.

The particulars of these allegations are:

- (i) on or about April 15, 2002, Mr. Jobanputra performed refractometry on Miss S. Reist at Eyeland Optical, 1005 Ottawa Street North, Stanley Park Mall, Kitchener, Ontario, (“Eyeland Optical”), contrary to the standard of practice and directive of the College of Opticians of March 9, 2001, which was disseminated to members on or about March 14, 2001, and which prohibited members from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians had been developed and adopted; thus engaging in conduct that, having regard to all the circumstance, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonourable or unprofessional;
- (ii) on or about April 15, 2002, Mr. Jobanputra prescribed eyeglasses to Miss Reist without being authorized to do so and submitted to Miss Reist a form of prescription that purported to have been signed by Dr. L. M. Niranjana, which falsely represented that Dr. Niranjana had examined Miss Reist and prescribed the eyeglasses; and
- (iii) on or about April 15, 2002, Mr. Jobanputra misled Miss Reist and her parents, Paul and Lisa Reist, into believing that he was authorized to perform refractometry and prescribe eyeglasses by so performing and prescribing and failing to inform the Reists otherwise.

Ms. Melisse Willems, Counsel for the College of Opticians of Ontario, filed the Notice of Hearing dated October 5, 2004, as Exhibit 1 and the Statement of Agreed Facts as Exhibit 2.

Member's Plea:

Mr. Shailesh Harjivan Jobanputra, C-1696, who was represented by Mr. Gerry Schaffer, admitted the allegations set out in the Notice of Hearing. The Panel of the Discipline Committee was satisfied that the Member's admission was voluntary, informed and unequivocal.

Statement of Agreed Facts:

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced a Statement of Agreed Facts which provides as follows:

Facts:

1. Mr. Shailesh Harjivan Jobanputra is a member of the College of Opticians of Ontario with membership number C-1696. Mr. Jobanputra is not a member of the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario.
2. Mr. Jobanputra is the owner and operator of Eyeland Optical, located at 1005 Ottawa Street North, Stanley Park Mall, Kitchener, Ontario (the "Store").
3. On March 9, 2001, the Council of the College of Opticians passed a resolution that prohibits members of the College of Opticians from performing refractometry until effective and enforceable standards of practice for the performance of refractometry by opticians had been developed and adopted. No such standards were in place on or about April 15, 2002, or March 25, 2003, the dates relevant to the allegations against Mr. Jobanputra. The content of the resolution was disseminated to the members of the College of Opticians in an Optical Bulletin on March 14, 2001, including Mr. Jobanputra, who received it and was aware of its contents.

The Reist Complaint:

4. On or about April 15, 2002, S. Reist, a minor, attended with her parents at the Store to have her eyes tested. The Reists were long-time patients and customers of Mr. Jobanputra. On this occasion, Mr. Jobanputra performed a refractometry test on Miss Reist, as he had done in the past, and prepared what purported to be a prescription for her based on the results of the refractometry test [the "Purported Prescription"]. Miss Reist and her parents took the Purported Prescription with them and left the Store. Shortly thereafter, Miss Reist purchased prescription eyeglasses from Hakim Optical in Kitchener, Ontario, using the Purported Prescription

provided by Mr. Jobanputra. Her father, Paul Reist, subsequently submitted the Purported Prescription with a claim to his insurance company for reimbursement. A copy of the Purported Prescription was attached as Exhibit "A".

5. In or about May 2002, Miss Reist decided that she wanted contact lenses and her father again attended Hakim Optical, to order contact lenses for her. The optician at Hakim Optical told Mr. Reist that she would first need Miss Reist's original prescription. Mr. Reist went back to the Store and requested a copy of the prescription from Mr. Jobanputra. Mr. Jobanputra refused to give Mr. Reist a copy of the prescription, but he wrote out what he said were the prescription details on a piece of paper, and he provided this to Mr. Reist. This paper was not signed but did have the name "Niranjan" handwritten on the back. A copy of the unsigned paper was attached as Exhibit "B".
6. Mr. Reist then returned to Hakim Optical and again attempted to order contact lenses for his daughter using the unsigned paper that he had just received from Mr. Jobanputra. The optician at Hakim Optical refused to fill it as it was unsigned. Mr. Reist then left the store.
7. Mr. Reist subsequently asked his insurance company to return to him the original Purported Prescription that he had submitted, so that he could order contact lenses for his daughter. Upon receiving the Purported Prescription, Miss Reist and her parents discovered that it had been written on a prescription pad purporting to be from a Dr. L. M. Niranjan. Dr. Niranjan was a former member of the College of Physicians and Surgeons of Ontario. The Purported Prescription bore what appeared to be Dr. Niranjan's signature. Neither Miss Reist nor her parents had realized at the time they obtained the Purported Prescription that it had Dr. Niranjan's and not Mr. Jobanputra's name on it.
8. Miss Reist has never been examined by Dr. Niranjan nor has she ever been his patient. On April 15, 2002, when she attended at the Store, Miss Reist was attended only by Mr. Jobanputra.

The Hillgartner Complaint:

9. On or about March 25, 2003, Ms. Shelley Hillgartner, Senior Health Analyst with Manulife Financial Group Benefits [Manulife"], attended the store with Mrs. Ramona Sirbu as part of an investigation into a complaint by Mrs. Sirbu about a claim made by her husband. Mrs. Sirbu's insurer was Manulife. Ms. Hillgartner posed as a customer.
10. Mr. Jobanputra was in the Store on March 25, 2003, and served Ms. Hillgartner and Mrs. Sirbu on that occasion. Mrs. Sirbu approached Mr.

Jobanputra and told him that she was at the Store to pick up a pair of eyeglasses and that Ms. Hillgartner was a friend from work who was interested in getting the same deal that Mr. Jobanputra had given Mrs. Sirbu's husband. Mr. Jobanputra then asked Ms. Hillgartner if she wanted regular or high-end sunglasses and how much coverage she had under her insurance policy. Ms. Hillgartner replied that her limit was \$150.00.

11. Mr. Jobanputra then assisted Ms. Hillgartner in selecting eight (8) pair of non-prescription eyeglasses, up to the \$150.00 limit of her insurance coverage, which he then sold to Ms. Hillgartner. Ms. Hillgartner did not purchase any prescription eyeglasses from Mr. Jobanputra.
12. Ms. Hillgartner asked Mr. Jobanputra if he was going to provide her with everything she would need to be able to submit her claim for the sunglasses to her insurance company. Mr. Jobanputra replied that she had to pay him first and then submit her claim to be reimbursed directly by her insurance company.
13. Mr. Jobanputra then asked Ms. Hillgartner if she had received an eye examination. She replied that she had had one about one year previously but she did not need prescription eyeglasses. Mr. Jobanputra then advised Ms. Hillgartner that he would have to start a file on her in case anyone comes to review his records. He then asked her for her provincial health card and led her to another room in the Store where he performed a refractometry test on Ms. Hillgartner.
14. Mr. Jobanputra and Ms. Hillgartner then returned to the main part of the Store and Mr. Jobanputra prepared an invoice (No. 0895) for Ms. Hillgartner. A copy of the invoice given to Ms. Hillgartner by Mr. Jobanputra was attached as Exhibit "C". Mr. Jobanputra also completed, signed and stamped a Manulife Financial Group Benefits claim form representing that he had dispensed prescription eyeglasses to Ms. Hillgartner, and he provided this form to her. A copy of Ms. Hillgartner's Manulife Claim Form was attached as Exhibit "D". Ms. Hillgartner asked Mr. Jobanputra if she needed a prescription from him in order to get her claim paid by her insurance company. He replied, pointing to the invoice, "That is it." Mr. Jobanputra knew that he was completing the form for Ms. Hillgartner to submit to her insurer for reimbursement of prescription eyeglasses.
15. On June 10, 2003, Mr. Malcolm McIntosh, Investigative Consultant with Manulife Financial, attended the Store to speak with Mr. Jobanputra about Ms. Hillgartner's invoice and Mr. Jobanputra retrieved a copy of the same invoice from his records. The copy of the invoice that was in Mr. Jobanputra's file also included the results of the refractometry test performed on Ms. Hillgartner by Mr. Jobanputra. A copy of the invoice

that was in Mr. Jobanputra's file was attached as Exhibit "E". Mr. Jobanputra told Mr. McIntosh that he had dispensed a pair of prescription eyeglasses to Ms. Hillgartner and he admitted that it was his signature on the back of Ms. Hillgartner's Manulife claim form.

16. When the College investigated this matter, Mr. Jobanputra provided a copy of what purported to be a prescription prepared based on the results of the refractometry test he had performed on Ms. Hillgartner. Mr. Jobanputra did not give a copy of this purported prescription to either Ms. Hillgartner or Mr. McIntosh. A copy of this purported prescription was attached as Exhibit "F". Although it was written on the prescription pad of Dr. Niranjana and bore a signature that purported to be that of Dr. Niranjana, Ms. Hillgartner had never met Dr. Niranjana; she had never been examined by him or was she ever his patient.

Decision:

The Panel deliberated and decided to accept Mr. Jobanputra's admission to the allegations in the Notice of Hearing. The Panel reviewed and considered the Notice of Hearing, the Statement of Agreed Facts, the submissions of the parties and finds that the facts support findings of professional misconduct. In particular, the panel made findings:

- (a) that Mr. Jobanputra committed acts of professional misconduct by violating section 1 paragraphs 2, 21, 23, 24 and 28 of Regulation 828/93, as amended, in that he engaged in the practice of refractometry on or about March 25, 2003, and April 15, 2002.
- (b) that Mr. Jobanputra contrived a standard of practice of the profession, he falsified records, signed or issued documents in his professional capacity that he knew or ought to have known contained false or misleading statements, submitted accounts or charges that he knew or ought to know were false or misleading.
- (c) that Mr. Jobanputra engaged in conduct in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonourable or unprofessional.

Reasons for the Decision:

The first allegation states that on or about March 25, 2003, Mr. Jobanputra performed refractometry on Ms. Shelley Hillgartner at Eyeland Optical, 1005 Ottawa Street North, Stanley Park Mall, Kitchener, Ontario, contrary to the standard of practice and directive of the College of Opticians of Ontario on March 9, 2001. Following this, a false patient record was created for Ms. Hillgartner in order to falsify an insurance claim form.

The second allegation states that on or about April 15, 2002, Mr. Jobanputra performed refractometry on the minor, Miss S. Reist, also at Eyeland Optical. Again, this was

contrary to the standard of practice and directive of the College of Opticians of Ontario of March 9, 2001.

It is obvious that the admitted facts support the alleged and admitted misconduct.

Penalty:

Counsel for the College of Opticians advised the Panel that a joint submission as to penalty had been agreed upon. This was delivered to the Panel as Exhibit "4"

Consent Disposition:

The parties agree to dispose of this matter in the following way:

- (a) Mr. Jobanputra shall appear before the Panel to be reprimanded and the fact of the reprimand shall be recorded in the Register of the College;
- (b) The Panel shall direct the Registrar to suspend Mr. Jobanputra's certificate of registration for a period of two (2) months, to commence as of October 31, 2005;
- (c) The Panel shall direct the Registrar to place the following specified term, condition, or limitation on the Member's certificate of registration for a period of two (2) years commencing October 4, 2005:
 - (i) Mr. Jobanputra shall permit a representative of the College to review the procedures and record keeping of his practice by permitting the representative to attend at his business premises, without notice to Mr. Jobanputra, and examine Mr. Jobanputra's records as the representative may require (the "Inspections"). The Inspections shall be conducted at the sole discretion of the College and shall not exceed a total of ten (10) over a period not exceeding two (2) years. Mr. Jobanputra shall pay to the College, within fifteen (15) days of each Inspection, costs in respect of each Inspection to a maximum of \$600.00 per Inspection. Mr. Jobanputra is not required to pay costs for more than six (6) Inspections;
- (d) Mr. Jobanputra shall pay part of the costs of the College in the amount of \$8,000.00 payable in eight (8) monthly installments of \$1,000.00 each commencing November 1, 2005; and
- (e) In the event that any of the payments payable pursuant to subparagraph (d), above is not made within thirty [30] days of the date in which it is due (the "Default"), Mr. Jobanputra's certificate of registration shall be suspended for a further period of one (1) week for each such Default in addition to the suspension ordered pursuant to subparagraph (b), above. Any additional suspension ordered against Mr. Jobanputra is not intended to, and will not, absolve him of his obligation to pay the entire amount of the costs ordered against him.

Penalty Decision and Reasons:

The Panel accepts the Consent Disposition and believes that the penalty is appropriate to deter Mr. Jobanputra and other Opticians from engaging in this type of activity in the future.

The Panel believes that this Disposition is appropriate in this case because:

- (1) By attending before the Panel for a reprimand, Mr. Jobanputra has heard from his peers that this kind of professional misconduct will not be tolerated by the profession.
- (2) The Panel felt that the suspension of two months was adequate to act as a sufficient deterrent to ensure that Mr. Jobanputra will not engage in professional misconduct again. The Panel felt that this will demonstrate both to Mr. Jobanputra and the membership the type of penalty that awaits them should they behave in a similar fashion. This kind of behaviour is inappropriate and will be prosecuted.
- (3) The Panel's decision to place a term, condition or limitation on the certificate of registration of Mr. Jobanputra for a period of two years is felt to ensure Mr. Jobanputra complies with the standards of practice and the order to maintain proper records.
- (4) The Panel feels that the College of Opticians actual costs in the matter were well over the ordered \$8,000.00. These expenses would include the investigation, the review by the College of Opticians Complaints Committee, the costs of the College Counsel, the pre-hearing conference that was held, the travel costs and honoraria of the Panel members, many of whom traveled from outside the city, and also the Panel's Independent Legal Counsel costs. Mr. Jobanputra's ability to pay was considered, however, on principal, in a case such as this, a member should be held accountable to pay a significant amount of the costs rather than the profession as a whole having to bear the costs. The Panel feels that in a case of this nature, this is an important principal which outweighs concerns about Mr. Jobanputra's individual ability to pay.
- (5) In reaching the final penalty decision, the Panel took into consideration that Mr. Jobanputra pleaded guilty which demonstrated a degree of remorse and acknowledgement of responsibility; was cooperative and appeared to realize the seriousness of his actions.

Mr. Jobanputra waived his right to appeal and the Panel issued the reprimand at the end of the hearing.

Dated this 18th day of January 2006.

Colleen M. Karir, Chair of the Panel