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**BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

GENERAL OPTICAL COUNCIL

AND

IQBAL NABI (D-11818)

Wednesday, 18 May 2011

THIRD REVIEW OF AN INTERIM ORDER

THIRD REVIEW OF AN INTERIM ORDER – IQBAL NABI (D-11818)

Wednesday, 18 May 2011

Committee Members: Ms Fran Jones (Lay) (Chair)
Mrs Geraldine Huka (Lay)
Mr Andrew Cripps (Dispensing Optician)

Legal Adviser: Mr David Marshall

For the GOC: Ms Gemma Gillet

Hearings Manager: Mr D Henley, BEM

The Registrant was neither present nor legally represented

[Hearing commenced at 12.47]

Ms Jones: Good afternoon. I am Fran Jones and I have been elected to chair today's Review of an Interim Suspension Order regarding Iqbal Nabi which was made on 21 December 2009. The Committee today is made up of one dispensing optician and two lay members. I will ask the members to introduce themselves and the capacity in which they sit commencing on my far right. *[Introductions]*

To my right is Mr David Marshall, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Mr Nisbet who will be keeping an official record of all that is said today during the sessions of the Hearing at which the parties are present.

It is the Council's policy for the Determination of the Committee and a transcript of proceedings to be displayed on the Council's website for public viewing but where matters of health have been discussed the Determination and transcript will be redacted accordingly.

I can see that it appears Mr Nabi is neither present nor represented today.

Ms Gillet: Indeed, Madam.

Ms Jones: Okay, can I invite you to outline for us that all reasonable efforts have been made to contact Mr Nabi and that he is aware of today's proceedings?

Ms Gillet: Madam, the lawyer with conduct of this case, Victoria Lord of Kingsley Napley, has had telephone conversation with the lawyers who are instructed by Mr Nabi who have verbally confirmed, although we have nothing in writing, that they do not intend to be here today because the matter is not contested.

That is our understanding of the position, but as I said we have nothing in writing from them.

Ms Jones: We have received two bundles of evidence. The larger document R4 C1 which is the General Optical Council and Mr Iqbal Nabi Interim Order Review Hearing, and the second is a Service of Notice Hearing.

You say you have had verbal confirmation. Could you take us through the second document, C2 to confirm that Mr Nabi is aware?

Ms Gillet: Madam, please, if I could please ask the Panel to turn their attention to Page 1 of the smaller bundle, that is the print-out from the General Optical Council with the registered details of Mr Nabi, and obviously he is under a duty as part of his ongoing commitments to the regulatory body to keep those details up to date.

You will then see on the next page the letter written to Mr Nabi reminding him of today's Hearing which he should already have been aware of in any event, but that was sent on 30 March 2011 by special delivery, and you will notice that the address on the letter matches the address on the Register.

On the final page, Page 5, you will see that there is an electronic print-out which purports to be proof of delivery. I accept that nothing can be gained from the scribble.

All one can ascertain from that is that someone certainly at the registered address took delivery of the item, whether Mr Nabi or on behalf of Mr Nabi, it would certainly appear on the documents that the General Optical Council have satisfied their requirements in making Mr Nabi fully aware of today's proceedings, and of course in addition we have the verbal confirmation from his lawyers that they are aware and do not intend or wish to attend.

In those circumstances, Madam, I would submit that there is little or no prejudice to Mr Nabi. He has voluntarily waived his right to attend today's Hearing and in those circumstances the Panel should feel confident in proceeding today in his absence, which would be my application.

Ms Jones: Can I ask our Legal Adviser to advise us?

Mr Marshall: Yes, certainly. There are two questions for the Committee. The first is a question of fact; have all reasonable efforts been made to notify the Registrant of the Hearing and the second is an exercise of discretion.

As to the facts, Rule 65, the part of the Act deals with the method of service:

“A notice of hearing can be served by sending it to the registered address by recorded delivery or a similar system”.

It is not necessary for the Council to prove that notice was received, but in this case you have seen delivery information indicating that notice was in fact delivered to the registered address so you have ample evidence to satisfy you that all reasonable efforts have been made.

As for the exercise of discretion you must balance the Registrant’s interests in being heard against the public interests in ensuring that Interim Orders are reviewed at the appropriate time.

You have heard that a message has been passed from his solicitors which apparently indicates that he is waiving his right to attend today. That may satisfy you on the discretion point.

I would just remind you that if you do decide that the Hearing should go ahead in the absence of the Registrant, you must ensure that the Hearing is as fair as the circumstances permit and you should be vigilant to identify any weaknesses in the Council’s case because the Registrant will not be here to do so.

Ms Jones: Okay, thank you. Does the Committee want to go into *camera* or are you happy to continue? [*Confers*] We will continue, thank you.

Ms Gillet: Madam, Mr Nabi is registered with the General Optical Council and the Hearing today is in order to review an Interim Suspension Order imposed on 21 December 2009 pursuant to Section 13(1) of the Opticians Act.

On 21 December 2009, after hearing submissions from the Registrant and the Council the Panel made an Order to suspending Mr Nabi’s registration for a period of 18 months.

At the time there were ongoing police enquiries in relation to allegations of fraud which are set out in the Statement of Facts which is contained in your bundle at Page 1, Paragraphs 4-11.

The test for such an order is set out in Section 13L(1) of the Act. An Interim Order can be made

“Where a Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or in the interest of the Registrant for

- (a) his registration to be suspended or to be subject to conditions”.

The original Determination on 21 December can be found in your bundle at Page 23. During your reading of the bundle you will have noticed that the original Committee gave consideration as to whether conditions of practice may be appropriate but they felt that the gravity and serious nature of the allegations meant that only an Order for Suspension would be appropriate.

In accordance with the Act, two Review Hearings have taken place, the first on 28 May 2010 and the second on 26 November 2010, and the decision of both committees were that the suspension order should continue as determined by that original committee.

At the back of your bundle between Pages 47 and 65 you will see copies of the email correspondence between Mr Kevin Oliver at the NHS Counter Fraud and the Council.

At Page 64 you will see in the more recent correspondence that Mr Nabi and his co-defendant were charged at Hastings Police Station on 19 March 2011 under Section 1 of the Fraud Act 2006 and ordered to appear at Hastings Magistrates’ Court on 1 April 2011.

The email states that this was for a preliminary hearing, but in fact those hearings are known as first appearances.

On 1 April Hastings Magistrates’ Court declined jurisdiction, thereby determining that the matter was too serious to be dealt with by way of a summary team, their powers not being sufficient to deal with by way of sentence should the matter conclude with a guilty verdict, and the matter has therefore been listed for a committal to the Crown Court on 16 May – of course 16 May has already occurred.

The role of the Panel today is to decide whether the Interim Order should continue and in deciding that you must be satisfied that it is necessary for the protection of members of the public or otherwise in the public interest.

Those are the two grounds on which the order was originally made, and the test remains the same at the Review Hearing.

Of course, it is also necessary to balance that against the interests of the Registrant, in this case Mr Nabi.

The Council would submit that the situation is strengthened in light of the recent decision by the Crown Prosecution Service to charge Mr Nabi and the more recent decision of the Magistrates’ Court to send the matter to the Crown Court for a jury trial, in light of which I invite the Panel to allow the Order to continue.

According to the legislation, an Interim Suspension Order can only be made for a period not exceeding 18 months. The Order made by the Panel on 21 December 2009 will therefore expire on 21 June 2011, and Madam, my best guess, and it is only a guess, is that a Crown Court trial is likely not to be listed before October or November of this year.

The Act also stipulates that the Council may apply to the relevant court for an Order to be extended and the relevant court is the High Court, in light of which this matter has been listed for the High Court to consider an extension of a Suspension Order should this Panel determine that it should continue today on 8 June 2011.

Unless I can assist you any further, those are my submissions on behalf of the Council.

Ms Jones: Can I ask the Panel if they have any questions?

[There were no questions from the Committee]

Would you like to advise us?

Mr Marshall: Certainly. This is a Review of an Interim Suspension Order. You have the power to revoke the Order, to replace the present Order for Suspension with an Order for Interim Conditional Registration or to leave the Order unchanged.

You should have regard to all the circumstances prevailing on the date of this Review Hearing as well as the situation at the time of the initial Order. You must comprehensively reconsider the existing Order in the light of the circumstances which are now before the Committee. An Interim Order can only be continued where you remain satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the interest of the Registrant.

You should bear in mind the principle of proportionality. Any Order imposed on the Registrant should be no more restrictive than is necessary to meet the public interests you are here to serve.

That is my advice.

Ms Jones: Can I question our Adviser as to I understand that we are at the end of the 18-month process and we know that there is another process to extend, so if we were to apply any order, what time period could that one cover?

Mr Marshall: The time periods don't arise on a review. Your powers, as I have said, are to do nothing which means that the order continues until it expires in about June, or you can vary the nature of the order, you could change it to conditions, or you could bring it to an end, but you have no power to extend it – only the court can do that, so the Committee doesn't have to consider issues of time at all.

Ms Jones: Okay, thank you. Do you have any final comments or questions?

[There were no comments or questions]

Okay, Mr Henley would you please clear the room?

[Hearing adjourned at 13.00]

[Hearing resumed at 13.20]

Ms Jones:

Determination

Service

The Committee is satisfied that all reasonable efforts have been made to notify the registrant of the hearing. The Committee further determined that it would be in the public interest for the hearing to proceed in the registrant's absence. The registrant's solicitors have indicated that he is aware of the hearing but does not wish to attend because he does not oppose the continuation of the order.

Decision

The Fitness to Practise Committee reviewed an interim suspension order made by the Fitness to Practice Committee on 21 December 2009 in respect of Iqbal Nabi; the order being for 18 months in duration.

The Committee has conducted a full review of the case today, and notes that since the previous review hearing the CPS had decided to take action against the registrant. He has been charged and appeared at the Magistrates Court on 1 April 2011. The Magistrates referred the case to the Crown Court for trial due to the seriousness of the matters of this case. The Committee is satisfied that at present it remains necessary for the protection of the public, and is in the wider public interest, to continue the present interim suspension order for the same reasons as the order was continued on the last occasion.

The Committee ordered that the current suspension order be maintained until its date of expiry. The Committee further noted that the current interim suspension order is due to expire on 20 June 2011 and accordingly makes no order to further review the matter at a future hearing. It understands that an application will be made to the High Court on 8 June 2011 to extend the period of the order."

That concludes matters. Thank you.

[Hearing concluded at 13.22]

