

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Hearing
Thursday, 7 March 2024**

Virtual Hearing

Name of Registrant:	Ewan Corral
NMC PIN	01D0009S
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing – May 2004
Relevant Location:	Perthshire
Type of case:	Misconduct
Panel members:	Paul Grant (Chair, lay member) Susan Laycock (Lay member) Jane Jones (Registrant member)
Legal Assessor:	Jayne Wheat
Hearings Coordinator:	John Kennedy
Nursing and Midwifery Council:	Represented by Debbie Churaman, Case Presenter
Mr Corral:	Present and represented by Gary Burton, instructed by Anderson Strathearn
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30 (1), namely 2 April 2024

Decision and reasons on review of the substantive order

The panel decided to take no further action and allow the order to lapse upon expiry.

This order will expire at the end of 2 April 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 3 June 2021. This order was reviewed on 22 February 2022 and the panel decided to extend the conditions of practice order for a further period of 12 months. The order was reviewed again on 21 February 2023 and the panel decided to extend the conditions of practice for a further period of 12 months. The order was listed for a review on 23 February 2024, but it was not heard on that date due to lack of time.

The current order is due to expire 2 April 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse:

1. *On 4 February 2018:*
 - a. ...
 - b. *spilled Oramorph medication when decanting it;*
2. *On 24 February 2018, administered Patient A's Temazepam medication in the morning when it was due in the evening;*
3. *Signed the MAR chart to indicate Patient B's antipsychotic medication had been administered when it was not in stock on:*
 - a. *17 April 2018;*

b. 18 April 2018;

c. 20 April 2018;

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'

The original panel did not find that charge 1b amounted to misconduct.

The second reviewing panel determined the following with regard to impairment:

'The panel considered whether your fitness to practise remains impaired.

The panel has carefully considered your reflective statement, which demonstrates you have developed insight since the previous review hearing. Additionally, the panel has taken into account your completion of CPD courses, including the course on Reducing Medication Errors in Nursing Practice, which the panel deemed relevant to improving your practice. Nevertheless, due to your inability to demonstrate safe practice by obtaining employment in a nursing environment, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel acknowledged that you have expressed a desire to work in a care home setting and that you have undertaken courses that are pertinent to that environment and role, despite not having worked in a nursing setting for a long period of time.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The second reviewing panel determined the following with regard to sanction:

'The panel next considered whether imposing a further conditions of practice order on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel considered that your failings were remediable, and that this could be achieved through workable conditions of practice, as the original substantive hearing panel had determined.

The panel heard no application from either parties to modify or revise the current order during the hearing. The panel concluded that the current order is reasonable and commensurate with the circumstances of this case. It further decided that the current conditions of practice order remains reasonable and practical, taking into account the potential risks that were identified previously.

The panel determined that a further conditions of practice order is sufficient to protect patients and the wider public interest. The panel considered the current conditions to be necessary in order to address the concerns, protect the public and meet the wider public interest. In its view, to reduce the scope of the conditions any further would not be appropriate given your current inability to evidence safe practice. The panel was satisfied that the current conditions remain appropriate, workable, practicable and proportionate.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because you have taken steps to address the risks identified and expressed your desire to undertake a Return to Practice course to strengthen your practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 2 April 2023. The panel considered that a period of 12 months would allow you to enrol on a Return to Practice course and

gain relevant employment within which you can demonstrate compliance with the conditions of practice order. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. Until such time as you have been assessed by another registered nurse as competent in medication administration and management, and recording, you must not undertake medicines administration except under supervision. That supervision must consist of working under the direct observation of another registered nurse.*
- 2. Within 4 months from the date of when the conditions come to effect, you should complete a course in medication management and administration, and recording. You must send your case officer evidence that you have successfully completed this within 14 days of completion of said course.*
- 3. You must meet with your line manager, mentor or supervisor at least monthly to discuss your progress in relation to medication management and administration, and recording.*
- 4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment;*
 - b) Giving your case officer your employer's contact details.**
- 5. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study;*
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.**

6. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for;*
 - b) *Any agency you apply to or are registered with for work;*
 - c) *Any employers you apply to for work (at the time of application);*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study;*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
7. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in;*
 - b) *Any investigation started against you;*
 - c) *Any disciplinary proceedings taken against you.*
8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer;*
 - b) *Any educational establishment;*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The period of this order is for 12 months.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the Nursing and Midwifery Council (NMC) bundle, and written submissions from yourself. It has taken account of the submissions made by Ms Churaman on behalf of the NMC.

Ms Churaman submitted that since the last review you have been unable to find work as a registered nurse, and that this has limited your ability to comply with the conditions of practice order imposed. She submitted that you have provided no new information on any training you have undertaken to strengthen your practice and there is no new reflective piece submitted to show development of insight. In light of this Ms Churaman submitted that your fitness to practice remains impaired.

Ms Churaman noted that you have indicated an intention to leave nursing and be removed from the register but have been unable to do so while the order is in place. She drew the panel's attention to the case of *General Optical Council v Clarke [2018] EWCA Civ 1463* noting that if a panel wishes to allow an order to lapse to allow a registrant to be removed from the register the panel should still consider and make a determination on impairment first.

Ms Churaman referred to the NMC guidance *REV-3h* which states:

'In most circumstances nurses, midwives or nursing associates who are subject to a substantive suspension or conditions of practice order, but no longer wish to continue practising, should be allowed to be removed from the register. Our Order and Rules state that professionals cannot be removed from the register while a substantive suspension or conditions of practice order is in place.

Allowing professionals to leave the register can be achieved in two ways:

a) the nurse, midwife or nursing associate can request an early review of their substantive order because they no longer wish to continue practising; the panel will then be invited to lift the substantive order in order to allow the professional to be removed from the Register;

b) the nurse, midwife or nursing associate can indicate at a standard review that they no longer wish to continue practising; the panel will then be invited to let the

substantive order expire in order to allow the professional to be removed from the Register.'

She submitted that in light of the submissions made on your behalf, the panel may consider point b of the guidance to be appropriate.

The panel also had regard to submissions made by Mr Burton on your behalf.

Mr Burton submitted that you are asking the panel to allow the order to lapse in order that you might be removed from the register as you no longer wish to work as a nurse. He submitted that you accept your fitness to practice remains impaired, and that you have been out of practice for almost three years.

Mr Burton submitted that you have not paid the registration fee since 30 April 2021 and have not completed revalidation. Therefore, you only remain on the register because of the order in place and if the panel decide to let the order lapse your registration will expire. He submitted that you have no wish to return to nursing, given your current age and that you have found suitable employment outwith the profession.

Mr Burton referred the panel to the following letter from you dated 10 March 2023:

'To whom it may concern.

As my registration is expired. I have decided to retire completely from nursing and have made this known to the relevant parties.

I have secured employment as a cleaner with ... and I do not want to give up a job with relative security to take up nursing again.

...

I declare I will not seek readmission for at least 5 years and as I sign this declaration this will be legally binding for me to honour.

My future intentions are to remain with ... and seek progression in the future where my skills can or may be utilised by the company. I intend to seek how I can improve myself to allow me to apply for other jobs within

I will clearly state I have no intentions of seeking a pathway back into the nursing profession.

I did my best for the people I served many will stay in my heart forever- I did not let them down.

*Kind regards,
Ewan Corral RMN.'*

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had insight and had undertaken a number of training courses but had not been able to find work as a registered nurse. At this hearing the panel heard no new information that substantially changed the position regarding impairment.

The panel noted the admission made on your behalf that your fitness to practice remains impaired. The panel considered that you have not been in work as a nurse since 2021 and have therefore not been able to demonstrate any strengthening of practice. The panel considered that this has meant you have been unable to be supervised by another registered nurse in medications administration and management.

The panel noted your email from 10 March 2023 and considered that you have no intention of returning to work as a registered nurse and have not been seeking employment as a nurse for a sustained period of time.

The panel considered the following part of NMC guidance *REV-3h*:

'Before allowing a professional to leave the register by lifting a substantive order or allowing it to expire, the panel should make it clear whether they consider the professional's fitness to practise to be currently impaired.

This is because nurses, midwives or nursing associates, whose registration lapses or are removed from the register after a suspension or conditions of practice order expires or is lifted, can apply for readmission. In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision whether the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.'

Therefore, the panel determined that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions

Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

In this case, the panel had careful regard to your statement of intent on leaving the nursing profession, the fact you have not completed revalidation nor paid the registration fee, and the NMC guidance in *REV-3h*. The panel was mindful that should the order be allowed to expire your registration will lapse at the same time. Therefore, given your stated intentions the panel determined that a fair, proportionate, and reasonable approach, is to allow the order to expire in order for your registration to lapse and your name will be removed from the register.

The substantive conditions of practice order will be allowed to lapse at the end of the current period of imposition, namely the end of 2 April 2024 in accordance with Article 30(1)

This will be confirmed to you in writing.

That concludes this determination.