Conduct and Competence Committee
Substantive Hearing- Consensual Panel Determination
13 July 2017
Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant Nurse: James Alexander Tait

NMC PIN: 13H3844E

Part(s) of the register: RNA, Registered Nurse (Sub part 1) - Adult 19 November 2013

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Maurice Cohen (Chair Lay member)
Andrew Galliford-Yates (Registrant member)
Annie Hitchman (Lay member)

Legal Assessor: Nigel Mitchell

Panel Secretary: Vicki Watts

Mr Tait: Not present and not represented

Nursing and Midwifery Council: Represented by Michael Bellis instructed by NMC Regulatory Legal Team

Outcome: CPD Accepted – 5 Year Caution Order
**Decision on Service of Notice of Hearing:**

The panel considered whether service of the notice of this hearing had been effected in compliance with Rules 11 and 34 of the (Nursing and Midwifery Council) NMC Fitness to Practise Rules 2004 (the Rules). Notice of today’s hearing was sent by recorded delivery and first class post to Mr Tait’s registered address on 26 May 2017. A copy of the notice of hearing was also sent to Mr Tait’s representative on 3 July 2017.

The panel accepted the advice of the legal assessor.

The panel was satisfied that notice of the hearing was duly served in accordance with the Rules and that 28 day’s notice had been provided.

**Decision on proceeding in absence**

Mr Bellis, on behalf of the Nursing and Midwifery Council (NMC), made an application to proceed in the absence of Mr Tait. He referred to email correspondence from Mr Tait’s representative, dated 28 June 2017, from which it is apparent that Mr Tait is aware that the hearing is taking place today, and has chosen not to attend, or be represented in his absence.

The panel accepted the advice of the legal assessor.

The panel was mindful that there is a clear public interest in dealing with this matter expeditiously, and that no adjournment has been sought by Mr Tait. The panel was made aware that the hearing today will deal with a consensual panel determination (CPD) proposal and that Mr Tait had agreed for the panel to consider this in his absence.

The panel concluded that no useful purpose would be served by an adjournment and that it would be fair, and in the interests of justice and Mr Tait, to proceed with the hearing today in his absence.
Mr Bellis, on behalf NMC, informed the panel that prior to this hearing a provisional agreement on a CPD had been reached between Mr Tait and the NMC.

The provisional agreement, which was put before the panel, sets out Mr Tait’s full admissions of the facts in the charges and that his fitness to practise is currently impaired by reason of his misconduct. It considers the issues of remediation and insight and summarises aggravating and mitigating factors. The provisional agreement also sets out the proposed sanction of a five year caution order.

Consensual Panel Determination:

The panel considered the provisional agreement reached by the parties, which read as follows:

Conduct and Competence Committee

Consensual panel determination: provisional agreement

Mr James Alexander Tait ("the Registrant") is aware of the CPD hearing. The Registrant does not intend to attend the hearing and is content for it to proceed in his and his representative’s absence. Mr Tait will endeavour to be available by telephone should any clarification on any point be required.

The Nursing and Midwifery Council ("NMC") and the Registrant PIN 13H3844E ("the parties") agree as follows:

Charges

1. The Registrant admits the following charges:

_That you, on a night shift commencing on 22 April 2015:_

1) Acted outside of your competence by volunteering to coordinate a shift when you had had no formal training to do so.

2) Failed to appropriately take care of Patient A in that you;
   a) Did not undertake all necessary observations.
   b) Did not administer insulin when required, on one or more occasions.
   c) Did not administer intravenous fluids when required, on one or more occasions.
   d) Failed to monitor blood sugars when required, on one or more occasions.
   e) Did not provide an adequate handover to the morning shift.
3) Did not administer intravenous antibiotics to Patient B with sepsis.

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

Facts

2. The facts are as follow:

3. The Registrant registered as a nurse on 19 November 2013. At the relevant time, the Registrant was employed by HM Forces Royal Air Force (“the RAF”) as a newly qualified military nurse and an Airman. The NMC received a referral from the RAF on 18 November 2015. The Registrant was discharged from service in May 2016.

4. The charges admitted by the Registrant relate to incidents which occurred whilst he was working on a night shift commencing on 22 April 2015 at the Queen Alexandra Hospital on the Cardiology Ward.

5. The Registrant volunteered to coordinate a shift when he was not qualified to do so. During this shift he failed to appropriately take care of a patient with Diabetic Ketone Acidosis. The failings in care relate to a failure to undertake observations, a failure to monitor blood glucose levels and a failure to give insulin to the patient. The Registrant also failed to give intravenous antibiotics to another patient who was suffering from sepsis.

6. These errors were noticed by staff members who were working on the following day shift. They also noted that the Registrant had failed to provide an adequate handover.

Misconduct

7. The Registrant admits that the facts, as set out in paragraphs 2 – 6 above, amount to misconduct by virtue of his reflective piece dated 5 May 2017 (Appendix 1) where he accepts that his actions led to the risk of harm to a patient. He accepts that his actions led to a patient deteriorating whilst in his care as a result of his actions/omissions and that he was working beyond his competency. The Registrant accepts that his actions fell short of what would be expected of a registered nurse in the particular circumstances of the case (Roylance v General Medical Council [2000] 1 AC 311) and that his conduct amounted to a serious departure from the NMC’s Code of Conduct – Professional standards of practice and behaviour for nurses and midwives (2015) (“the Code”).

8. In particular, the Registrant accepts that his conduct fell far below the following provisions of the Code:

Paragraphs in the Code:

13 Recognise and work within the limits of your competence
13.1 accurately assess signs of normal or worsening physical and mental health in the person receiving care.
13.2 make a timely and appropriate referral to another practitioner when it is in the best interests of the individual needing any action, care or treatment.
13.3 ask for help from a suitably qualified and experienced healthcare professional to carry out any action or procedure that is beyond the limits of your competence.

Impairment
General impairment

9. The Registrant accepts that his fitness to practise was impaired by reason of his misconduct according to the principles laid down by Dame Janet Smith in the Fifth Shipman Report, and reaffirmed in CHRE v (1) NMC and (2) Grant [2011] EWHC 927 (Admin). In particular, the Registrant accepts that he:

9.1. Has in the past acted and/or is liable to act so as to put a patient or patients at unwarranted risk of harm; and/or
9.2. Has in the past brought and/or is liable in the future to bring the profession into disrepute; and/or
9.3. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions.

10. The Registrant accepts that his actions were wrong and has demonstrated insight and remorse.

11. The Registrant’s insight can be seen from his reflective piece (Appendix 1). The Registrant does not attempt to excuse his conduct, recognising that “in hindsight, I realise that I was stepping beyond my capability by asking to co-ordinate the night shift and subsequently there were points during the night where I should have realised my limitations and ceded control of the ward back over to someone with more experience.”

12. The Registrant offers the following explanation for why this incident occurred:

“My feelings take a two pronged approach, in that I wanted to take on the responsibilities of co-ordination because I wanted to learn in what I thought would be a relatively safe environment to do so, as I was worried that in future I may be called upon to take charge of a night shift where it could have been be as a relatively new and inexperienced nurse alongside agency staff and/or more junior staff would have been the nurse with the most seniority and therefore would be expected to co-ordinate that shift.”

13. In light of the various responses provided by the Registrant, he has demonstrated that he would not act outside of his competency again. It is agreed that the Registrant has full insight into his conduct and the potential risks to public protection involved.

14. The Registrant also demonstrates remorse in his reflective piece (Appendix 1). He explains how he felt horrified that due to his inattention, stemming from taking on too many responsibilities when inexperienced to do so, he potentially caused patients under his care harm.
15. From this experience, the Registrant has learnt a salutary lesson and has accepted his limitations. The Registrant has fully engaged with the process and been open and candid about his failings and expressed remorse for his actions. On that basis, it is agreed that the risk of repetition of the conduct is low.

16. Further, the Registrant is no longer in nursing having retrained as a lifeguard and taken up a position of employment in such a role. On that basis, it is again agreed that the risk of repetition of the conduct is low. The Registrant does, however, accept that a return to nursing cannot be ruled out, taking his age into account, and that a return to nursing course would be required in the circumstances.

Public interest impairment

17. Finally, as Mrs Justice Cox set out in Grant at paragraph 71:

“it is essential, when deciding whether fitness to practise is impaired, not to lose sight of fundamentals, (namely) the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.”

18. The allegations in this case involve the Registrant undertaking a role that he was neither qualified nor competent to perform. Further, the Registrant’s actions put patients at real risk of harm. These are matters which are so serious as to engage the public interest.

19. The Registrant agrees that a finding of impairment must be made in order to mark the serious misconduct, to uphold proper professional standards of conduct and behaviour and to uphold and maintain public confidence in the profession and the NMC as its regulator. As such, it is clearly in the public interest that a finding of impairment be made in this case.

Sanction

20. The Registrant agrees that the appropriate sanction in this case is a 5 year caution order.

21. When determining the issue of the sanction, the following aggravating and mitigating factors have been taken into account:

22. The aggravating factors are:

   22.1. The Registrant acted beyond his capability.
   22.2. The Registrant put patients at real risk of harm.

23. The mitigating factors are:

   23.1. The Registrant has fully engaged with the regulatory process.
   23.2. The Registrant has shown full insight into his conduct.
   23.3. There have been no previous regulatory findings against the Registrant.
24. As set out in *Gill v GMC 2012*, sanctions must be considered in ascending order.

25. It is agreed that this is not a case where to take no further action would be appropriate. This is on the basis that the conduct of the Registrant was so serious that some form of regulatory action in the form of sanction must be taken in order to discharge the NMC’s duty to protect the public interest including protecting patients and upholding proper standards of conduct and behaviour and to maintain the reputation of the profession and the NMC as a regulator.

26. Paragraph 64 of the Indicative Sanctions Guidance states that, “a caution may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again”. It is agreed that a caution order is sufficient to protect the public including the wider public interest.

27. The Registrant’s behaviour, though unacceptable, did not result any patient harm. There is no risk of repetition taking into account the Registrant’s insight and reflection. Further, the Registrant is not currently employed in a nursing role. Additionally, the Registrant has engaged with the NMC from the outset.

28. There is no evidence of any further concerns with the Registrant’s practice. In light of the Registrant’s admissions, it is agreed that a caution order would maintain public trust and confidence in the nursing profession and the NMC as its regulator.

29. It is agreed that a period of five years is appropriate because the Registrant in taking on the role of night shift co0ordinator clearly practised beyond his competency and put Patients at an unwarranted risk of harm. The caution will remain publicly visible against the Registrant’s registration for this period during which any new employers would be made aware.

30. It is agreed that a conditions of practice order would not be appropriate in this case. The Registrant does not pose a risk to public protection taking into account his insight and reflection. Further, the Registrant is not currently working in the nursing profession.

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out at section 1 above, and the agreed statement of facts set out at paragraphs 3 to 6 above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

Signed ...........................................  Dated .............................................

James Alexander Tait
Signed ........................................  Dated .................................................. 

(For and on behalf of the NMC)
Decision and reasons on the proposed consensual panel determination:

The panel accepted the advice of the legal assessor.

The panel had sight of the appendix to the CPD which comprised of Mr Tait’s reflective piece dated 5 May 2017.

The panel found the facts of the case proved by way of Mr Tait’s admissions, as set out within the CPD.

Mr Tait has admitted that his actions amounted to misconduct and that his fitness to practise is currently impaired.

The panel determined that the facts found proved by way of admission constituted breaches of the NMC 2015 Code of Conduct as set out in the CPD. The panel was satisfied that Mr Tait’s actions led to the risk of harm to a patient, his actions led to a patient deteriorating whilst in his care as a result of his actions/omissions and by working beyond his competency which fell below the standards expected of a registered nurse.

The panel was in agreement with the CPD that the facts in this case were such that public confidence in the nursing profession would be seriously undermined if a finding of impairment were not made. The panel considered that Mr Tait’s full admissions and acceptance of the CPD agreement, together with his detailed reflection, demonstrated insight into the charges, and an acceptance of how his misconduct impacted on patients and upon the wider nursing profession. The panel therefore agrees with the CPD that a finding of current impairment on the grounds of public interest alone is warranted.

The panel accepted the aggravating and mitigation factors as set out in the CPD. The panel considered in light of Mr Tait’s detailed reflection, there was a minimal risk of repetition.

The panel proceeded to consider sanction and had in mind the NMC’s Indicative Sanctions Guidance. It agreed that to take no further action in this case would be
insufficient to maintain public confidence in the nursing profession and the NMC as its regulator.

The panel next considered a caution order. The panel took into account Mr Tait’s engagement with the NMC. The panel considered the reflection he has provided using the Gibbs model of reflection for this hearing. In the panel’s view it is evident that he has thoroughly reflected on his misconduct. The panel particularly noted that Mr Tait states:

“\textit{In hindsight, I realise that I was stepping beyond my capability by asking to co-ordinate the night shift, and subsequently there were points during the night where I should have realised my limitation and ceded control of the ward back over to someone with more experience. This would have allowed for me to concentrate more fully on my own team of 12 patients, any may have possibly allowed for me to pick up earlier on the fact that a patient’s condition was deteriorating. I do know that the patient was for dialysis at some point in the next 48 hours following my shift, but I feel had I reacted to the warning signs earlier I could have at least helped prevent him having to go as an emergency admission to the dialysis unit. I also feel in hindsight it was my inexperience as a shift co-ordinator that led to me accepting the patient. As I have mentioned above, there was no clinical obligation for me to do so and it was to help lighten the workload of another practitioner that I agreed to do so in the first place. Had I more confidence in my abilities I may not have deemed it a practical move. I feel this was inexperience coming through, at the time I did not need to be adding further responsibilities to my shift...Naturally at this point in the proceedings of the reflective cycle, the analytical stage it must be noted to whom it may concern that this is an account coming more than two years after the original event occurred...}”

The panel considered that Mr Tait has recognised his failings and accepted that his fitness to practise is impaired and that a five year caution order is appropriate. The panel considered that a caution order may be appropriate where there is a need to mark the behaviour as unacceptable, and must not happen again. The panel was of the view that a caution order, for five years, would be appropriate in that it would address the public interest by sending a clear message of the standards expected of nurses.
The panel considered, given the nature of Mr Tait’s candid and thorough reflective piece, he may well at some stage in the future decide that he wants to work as a nurse again, the panel considered the reflective piece in which Mr Tait states: …”I am in the process of gaining a qualification as a Personal Trainer. A career in the sports industry is now where I see my future. However, the time spent acquiring my nursing degree and subsequent 3 years working in the profession were hard won privileges which I feel it would be immature of me to say, aged only 26 that I will never want to re-engage with…” The panel bore in mind Mr Tait’s comments regarding his future plans and that it was in the public interest that, with appropriate safeguards, Mr Tait should be able to return to nursing practice should he chose to do so. He has indicated in his reflective piece that he is willing to retrain in the areas where his failings have been identified it is also in the public interest to relation good and dedicated nurses.

Mr Tait’s record in the NMC register will show that he is subject of a caution for a period of five years and anyone who enquires about his registration during that period will be informed about the order.

That concludes this determination.