

Conduct and Competence Committee

Substantive Order Review Meeting

20 March 2017

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of Registrant: Gary Snape

NMC PIN: 94E0163E

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nurse – 19 May 1997

Area of Registered Address: England

Panel Members: Eileen Skinner (Chair/Lay member)
Kathryn Eastwood (Registrant member)
James Peacock (Lay member)

Legal Assessor: Gerard Coll

Panel Secretary: Pauline Wharton

Order being reviewed: Conditions of practice order – 12 months

Outcome: **Conditions of practice order replaced with a suspension order for a period of six months to come into effect at the end of 6 May 2017 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001**

Decision on Proof of Service:

The panel considered whether notice of this substantive order review meeting had been served in accordance with Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended)*, (the Rules), which state:

11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

34.(3) Any other notice or document to be served on a person under these Rules may be sent by—

(a) ordinary post

(4) The service of any notice or document under these Rules may be proved by—

(a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;

Notice of this substantive order review meeting was sent by recorded delivery and first class post to Mr Snape at his address on the register on 19 January 2017. Notice of the meeting was also sent to his representatives, the Royal College of Nursing (RCN), on the same date. The notice informed Mr Snape that it was the Nursing and Midwifery Council's (NMC) intention for this case to be considered at a substantive order review meeting. The notice advised that the meeting would be held in private, that the panel would make its decision based on written evidence only and that the review meeting would take place on or after 20 March 2017. The notice also made clear the panel's powers in disposing of the case and indicated that Mr Snape should respond by 13 March 2017 if he wished his case to be considered at a substantive order review hearing. The Royal Mail 'Track and Trace' documentation indicated that the recorded delivery item had been delivered on 21 January 2017 and signed for by a person named 'Snape'.

The panel had sight of a letter from the RCN to the NMC, dated 16 March 2017, in response to the notice of meeting which indicated that Mr Snape was happy for the meeting to proceed and included written representations in respect of the current order.

The panel heard and accepted the advice of the legal assessor who advised that notice of this meeting had been served in accordance with Rules 11A and 34.

In light of the information before it, the panel was satisfied that the notice had been served in accordance with the Rules. Given the terms of the letter from the RCN to the NMC on 16 March 2017, the panel is satisfied that Mr Snape and his representatives are aware that this case will be dealt with by way of a substantive order review meeting. The panel was therefore satisfied that it could proceed to consider this case.

Background:

The panel decided to replace the current conditions of practice order with a suspension order for a period of six months. This order will come into effect at the end of 6 May 2017 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (the Order).

This is the second review of a conditions of practice order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 1 April 2015. The order was reviewed on 16 March 2016 and extended for a period of 12 months. The current order is due to expire at the end of 6 May 2017. The panel is reviewing the order pursuant to Article 30(1) of the Order.

Mr Snape was present and represented at the substantive hearing. He admitted certain charges. The charges found proved at the substantive hearing are as follows:

“That you whilst employed as a Band 6 Community Nurse by North Essex Partner Foundation NHS Trust:

- 1) *In or around December 2009:*
 - a) *inappropriately asked Patient A to tie material around her body during an appointment;*
 - b) *wanted Patient A to wear her school uniform at her next appointment;*
 - c) *used drama therapy techniques on Patient A when you were not qualified to do so.*
- 2) *In or around September 2011, incorrectly assessed Patient B as being unsuitable for a referral to the Tier 3 Clacton Team.*
- 3) *In or around September 2011, discharged Patient K, without speaking to his parent and/ or guardian first;*
- 4) *...*
- 5) *On 1 June 2012 made incomplete entries on a handover sheet.*

That you whilst employed as a Band 6 Community Nurse by North Essex Partner Foundation NHS Trust (“the Trust”) between December 2009 and 10 April 2013

failed to demonstrate the standard of knowledge, skill and judgement required for practice without supervision as a Registered Nurse in that you:

- 6) *Failed to complete an adequate Care Programme Approach (“CPA”) on Patient C on or around 14 December 2011 in that you:*
 - a) *recorded information not relevant to Patient C’s support networks;*
 - b) *Did not detail what the concerns were with regard to Patient C and girls;*
 - c) *Did not record adequate information regarding a police investigation in April 2011;*
 - d) *Recorded information not relevant to Patient C’s psychiatric history;*
 - e) *Did not record information relevant to Patient C’s mental state assessment.*
- 7) *Failed to complete an adequate CPA on Patient D on or around on 8 February 2012 in that you:*
 - a) *Did not complete a risk assessment;*
 - b) *Recorded information not relevant to Patient D’s housing circumstances and/or history of abuse;*
 - c) *Did not provide adequate information about Patient D’s history of sexual abuse;*
 - d) *Did not record a mental state assessment.*
- 8) ...
- 9) *Failed to complete an adequate Risk Assessment on Patient E on or around 9 March 2012 in that you did not provide further information about Patient E’s risk of self-harm.*
- 10) *Failed to complete an adequate CPA on Patient F on or around 21 March 2012 in that did not provide a risk assessment of Patient F’s mental health and/or a treatment plan.*
- 11) *By 21 March 2012 had not completed or alternatively recorded:*
 - a) *assessments for two patients;*
 - b) *risk assessments and care plans for seventeen patients;*
 - c) *risk assessments for two patients;*
 - d) *care plans for four patients;*
 - e) *care plan reviews for two patients.*
- 12) *Failed to complete an adequate CPA on Patient G on or around 11 April 2012 in that you:*

- a) *did not complete a risk assessment and / or risk plan;*
 - b) *used inappropriate terminology in that you described the patient's biological mother as "Bio mum".*
- 13) *Failed to complete an adequate Risk Screening Assessment on Patient H on or around 12 April 2012, in that you did not provide further information about Patient H's risks after recording the risk type as "vulnerability"*
- 14) *Failed to complete an adequate CPA on Patient J on or around 7 July 2012 in that you did not adequately complete the:*
- a) *Registration Form;*
 - b) *Admission checklist;*
 - c) *Property list;*
 - d) *Consent form;*
 - e) *Treatment plan;*
 - f) *Nursing assessment;*
 - g) *Engagement and Formal Observation care plan;*
- 15) *Whilst practising as Community Nurse within the District Nursing Team between 2 February 2012 and 10 April 2013, you did not successfully complete the Trust's Capability Process.*

And in light of the above, your fitness to practise is impaired by reason of your misconduct and/or lack of competence in Charges 1 to 5 and/or your lack of competence in Charges 6 to 15."

The substantive panel concluded that Mr Snape's fitness to practise was impaired. It noted the following with regard to his fitness to practise:

"The panel was mindful of your developing insight and the evident steps you have taken towards remediation. However, the panel considered that there remains a risk of you repeating these failings and thereby putting patients at risk of harm; bringing the nursing profession into disrepute and breaching the fundamental tenets of the nursing profession.

The panel also noted the seriousness of the misconduct found against you and that this, combined with the considerably detailed lack of competence charges which occurred over a relatively long period of time, is sufficient to indicate the risk of the behaviour being repeated.

The panel was mindful of the apparent difficulties you had with your line manager at the time and the impact this would have had on your confidence and your practice. However, the panel considered that without evidence of good practice in a clinical setting a finding of current impairment would be required.”

The substantive panel imposed a 12-month suspension order. It stated:

“The panel considered that, in the light of your developing insight into your failures and into your health condition; the open and honest approach you have taken, and the attempts you have made to remedy your practice, a conditions of practice order would be the most appropriate and proportionate sanction. The panel has seen no evidence that you are unwilling to engage with this type of order or with further retraining. The panel also noted, and it was to your credit, that you have recognised the limits of your abilities and that you are better suited to roles outside an acute clinical setting.

In satisfying itself that a conditions of practice order was the appropriate sanction, the panel also considered a suspension order. The panel determined that this would not be the only available sanction which would protect the public and serve the public interest in this case. The panel did not consider that the misconduct or the competency concerns were sufficiently serious to warrant your temporary removal from the register. The panel considered that this would be disproportionate and would prevent you from returning to a clinical environment and developing your practice. The panel was persuaded that it was not in the public interest to prevent a committed practitioner such as yourself from returning to practice in circumstances where the public could be protected by the imposition of conditions”

The first reviewing panel considered the case at a substantive order review meeting. It made the following findings with regard to Mr Snape's fitness to practise:

“The panel took into account a letter from the RCN of 17 February 2016 that outlined Mr Snape’s current personal circumstances which have, through no fault on his part, prevented him from working as a registered nurse since the substantive hearing. The panel therefore concluded that Mr Snape has not been in a position to comply with the conditions of practice order. Therefore, as Mr Snape has been unable to take steps in accordance with the conditions relating to remediating his misconduct and developing insight, there is no evidence that the concerns identified by the 2015 panel have been addressed. The panel therefore concluded that Mr Snape’s fitness to practise is currently impaired.”

In relation to sanction, the first reviewing panel made the following findings:

“The panel next considered a conditions of practice order and, when doing so, took into account the representations made by the RCN. The panel reminded itself that it must impose the least restrictive sanction taking into account the need for public protection, the public interest and Mr Snape’s own interests. The panel concluded that in the circumstances a conditions of practice order met these criteria. The panel considered that it would be disproportionate at this stage to impose a more severe sanction.

The panel therefore decided to extend the current conditions of practice order for a period of 12 months to be imposed at the expiry of the current order. The panel considered that a further 12 months would allow Mr Snape sufficient time to return to nursing practice and demonstrate that he has complied with the order and remediated his failings in a clinical setting.”

Decision and reasons on review of the current order:

The panel has considered carefully whether Mr Snape's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the previous panels. However, it has exercised its own judgment as to current impairment and sanction.

Throughout its deliberations the panel has kept at the forefront of its considerations the public interest which includes the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

The panel considered all of the documentary evidence before it. The panel heard and accepted the advice of the legal assessor who advised that the panel should carry out a comprehensive review of the order in the light of current circumstances. He advised that the panel must first consider whether Mr Snape's fitness to practise remains impaired. It would only then go on to consider sanction in the event that Mr Snape's fitness to practise is impaired, having regard to the NMC's *Indicative Sanctions Guidance* (ISG). The legal assessor made reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* in relation to the factors to be taken into account when considering whether Mr Snape's fitness to practise remains impaired.

This panel noted that the first reviewing panel had extended the conditions of practice order as Mr Snape had not been in a position to comply with the provisions of the order and take the necessary steps to remediate his misconduct and further develop his insight. This panel had a letter from the RCN to the NMC, dated 16 March 2017, which advised that Mr Snape accepted that his fitness to practise remained impaired. The letter stated that Mr Snape had still not had the opportunity to work as a registered nurse and comply with the current conditions of practice order and that his proposed employment as a health care assistant had not materialised. The letter went on to state

that Mr Snape is currently employed as a housing support worker. It explained that he was unable to focus on the conditions of practice because he was providing support to a close relative who is terminally ill. Further, due to restructuring at his current place of work he required to focus his attention on potentially having to reapplying for his current post. For those reasons, the RCN invited the panel to extend the period of the conditions of practice order for a further 12 months.

The panel had regard to the fact that Mr Snape's former employers had placed him on a formal capability programme in 2008 which his employer was satisfied that he successfully completed in 2009. However, the panel also recognised the serious nature of Mr Snape's misconduct and lack of competence which in essence involved wide ranging failings in the care of vulnerable patients and occurred over a significant period of time despite the support provided by Mr Snape's employer. Mr Snape has indicated, through the RCN, that he has still not been in a position to comply with the conditions of practice order and take the necessary steps to remediate his misconduct and lack of competence and further develop his insight. In the circumstances, the panel is of the view that Mr Snape's nursing skills and knowledge will have further diminished with the passage of time.

As Mr Snape has not addressed the outstanding concerns of the previous panels, the panel concluded that there remains a risk of repetition and that consequently Mr Snape is not yet safe to return to practise as a registered nurse without restriction. The panel therefore determined that his fitness to practise remains impaired.

Having found Mr Snape's fitness to practise to be currently impaired, the panel then considered what, if any, sanction it should impose. The panel noted that its powers are set out in Article 29 of the Order. The panel has taken into account the ISG 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 first considered taking no action and allowing the existing conditions of practice order to lapse at expiry. The panel determined that such a course of action would be inappropriate given that it would not protect the public nor would it satisfy the

public interest in maintaining public confidence in the profession and the regulatory process.

The panel then considered whether to replace the existing conditions of practice order with a caution order. Given the serious nature of Mr Snape's conduct and the fact that he has not yet been in a position to remediate, the panel has identified an ongoing risk of repetition. The panel has therefore determined that a caution order would be neither appropriate nor proportionate as it would allow Mr Snape to practise unrestricted and would therefore be insufficient to protect the public and serve the wider public interest in maintaining public confidence in the profession and the regulatory process.

The panel next considered whether to extend the period of the existing conditions of practice order. The panel noted that the substantive panel had imposed a conditions of practice order for 12 months in light of Mr Snape's developing insight, the open and honest approach he had taken throughout proceedings, and the earlier attempts he had made to remedy his practice. The first reviewing panel had extended the conditions of practice order for a further 12 months to afford Mr Snape sufficient time to return to nursing practice and demonstrate compliance with the order.

The panel noted that Mr Snape's representatives had not explained the nature of the transferrable skills from nursing that he currently exercises in his current non-clinical role and how that assisted in keeping his nursing skills and knowledge up to date. The RCN had also not explained the relevance of the reading log submitted by Mr Snape which seemed superficial in regard to the serious failings identified. The RCN had not explained what you intended to do to enable you to return to nursing in the next 12 months in order to achieve that goal. Finally, although commendable that Mr Snape is supporting his seriously ill relative, no detail was provided about the time involved in supporting this person and the clinical skills required.

The panel is conscious that Mr Snape has been afforded some two years in which to provide evidence of compliance with the existing conditions of practice order to take the necessary steps to remediate. In the absence of any meaningful engagement on the

part of Mr Snape, the panel is not persuaded that a conditions of practice order has served any purpose and is any longer workable or practicable.

The panel went on to consider whether to replace the existing conditions of practice order with a suspension order. Mr Snape has engaged with the NMC process to an extent, through his representatives, but has by his own account been unable to comply with the conditions of practice order. Mr Snape has behaved in such a way that could have foreseeably resulted in harm to the patients in his care. In the absence of any information to suggest that he has or will sufficiently remedy his misconduct and lack of competence, the panel has identified an ongoing risk of harm to patients. In these circumstances, the panel concluded that the seriousness of Mr Snape's actions coupled with the lack of meaningful engagement on his part, means that the only appropriate and proportionate order that would now be sufficient to protect the public and the public interest in maintaining public confidence in the profession and the regulatory process would be a suspension order. The panel is satisfied that a period of six months would afford Mr Snape sufficient time to reflect on his current position.

Prior to reaching a final decision on a suspension order, the panel considered the next restrictive sanction, namely a striking-off order. However, the panel concluded that such a sanction, at this stage, would be disproportionate given that it has identified a lesser sanction that would be sufficient to protect the public and the wider public interest.

The panel is of the view that a panel reviewing this order would be assisted by evidence of the following:

- what action, if any, he has taken to keep his nursing skills and knowledge up to date and any relevant training he undertaken;
- information about Mr Snape's efforts to find employment in a health care setting;
- information about his current personal circumstances and evidence of his current health;
- any references or testimonials from any work whether paid or unpaid which reflect on Mr Snape's transferrable skills and competence.

Mr Snape is currently employed in a non-nursing position so is therefore unlikely to be adversely financially affected by a suspension order. In any event, the panel has determined that a suspension order is the order that is sufficient, appropriate and proportionate to protect the public and satisfy the public interest and it is therefore satisfied that the public interest outweighs Mr Snape's own interests in this case.

The suspension order will take effect from the expiry of the current conditions of practice order at the end of 6 May 2017 in accordance with Article 30(1) of the Order. The order will be reviewed shortly before its expiry or earlier if Mr Snape or the NMC request it. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

This decision will be confirmed to Mr Snape in writing.

That concludes this determination.