Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
2 – 4 October 2017
Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Kehinde Latifat Yusuf
NMC PIN: 08C1214E
Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 6 May 2008
Area of Registered Address: England
Type of Case: Misconduct
Panel Members: John Brookes (Chair, lay member)
Jude Bayly (Registrant member)
Carolyn Jenkinson (Registrant member)
Legal Assessor: James Holdsworth
Panel Secretary: Charlotte Richardson
Registrant: Present and not represented
Nursing and Midwifery Council: Represented by Paul Renteurs counsel,
instructed by NMC Regulatory Legal Team.
Facts proved by admission: All
Facts not proved: None
Fitness to practise: Impaired
Sanction: Conditions of Practice – 12 months
Interim Order: Conditions of Practice – 18 months
Details of charge:

That you, whilst working as an agency nurse at Chaldon Rise Nursing Home:

1. Failed to sign for the administration of medication to Patient B on 15 September 2016

2. On 16 September 2016, failed to administer medication and/or accurately record the administration of medication to:
   
   2.1 Patient A
   2.2 Patient B
   2.3 Patient C

3. Failed to administer medication and/or accurately record the administration of medication to Patient A on 17 September 2016

4. Failed to administer medication and/or accurately record the administration of medication to Patient B on 18 September 2016

5. Failed to test the blood glucose level and/or record the blood test of Patient D on 15 September 2016

6. Failed to administer insulin and/or record the administration of insulin to Patient D on 15 and/or 16 September 2016

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

Background

The charges arose from event which occurred whilst you were working as an agency nurse at Chaldon Rise Nursing Home (“the Home”) between 15 and 18 September 2016. It is alleged that, when working as the only registered nurse on duty, you made multiple medication errors. The Home used a medication dispensation system called “Biodose” in which individual doses were put into sealed pods, stamped with the name of the drug, the name of the patient, and the date and time at which it was to be administered. It is alleged that when a colleague took over nursing responsibilities from you after one shift, she discovered various pods which should have been dispensed with the medication still in them. She escalated her concerns to the Home Manager who conducted an investigation. It is alleged that you made multiple medication errors, which
allegedly included failing to test the blood sugar of a diabetic patient and administer and/or record the administration of his insulin, failing to administer and/or record the administration of Parkinson’s and dementia medication to patients, and, in respect of one patient, failing to administer and/or record the administration of anti-anxiety, anti-psychotic and mood-stabilising medications.

**Decision on the findings on facts and reasons**

At the outset of the hearing, you admitted all of the charges against you. The panel was satisfied that the admissions were unequivocal and therefore found all the charges proved by way of admission, pursuant to Rule 24(5) of Nursing and Midwifery (Fitness to Practise) Rules 2004 ("the Rules").

**Submission on misconduct and impairment:**

The panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

Having read the documentation, the panel decided it would be helpful to hear evidence from two NMC witnesses, in order to seek clarification on certain aspects of the incidents. The panel heard from Ms 1, who was a Senior Nurse at the Home and who assisted with the investigation by conducting an analysis of the residual medication and MAR charts, and Ms 2, who, following handover, discovered that you had not administered and/or signed for the medication and escalated her concerns to the Home.

The panel also heard evidence from you. You accepted that you had made serious mistakes at the Home which amounted to a serious lapse in professional standards. When questioned, you explained that your usual job as a theatre nurse does not involve the administration of medication. You stated that, although you were not trying to justify your actions, you did not receive a proper induction at the Home and did not understand how the "Biodose" system used by the Home worked. You stated that you had informed
a senior member of staff at the Home that you were struggling, and were told to rely on the care support staff for help. You believe that you did give some of the medication, but that you did not use the pre-prepared doses in the “Biodose” pods. You accept that, in any event, you failed to record medication that you did administer, as alleged.

Mr Renteurs submitted that your actions were sufficiently serious to amount to misconduct. He invited the panel to take the view that your actions amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* ("the Code") and directed it to specific paragraphs. Mr Renteurs submitted that your failure to administer and/or record the administration of medication was a serious dereliction of your duty as a registered nurse, and fell sufficiently short of the standards expected of you to amount to misconduct.

He then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Mr Renteurs referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*. He submitted that the first three limbs of the test endorsed within the judgement for determining current fitness to practise are engaged, and that it would not be appropriate for you to remain on the register without some restriction on your practice.

You stated that you are deeply sorry for your actions. You stated that this is the first time you have made such a mistake in your nursing career and that you will never make this mistake again. You informed the panel that you have done your best to remediate your practice, by undertaking a drug administration course, which you provided a certificate for dated 16 March 2017. You also told the panel of a Perioperative Development Programme, which is the area you currently practise in, and which covers record keeping, administration of medication and patient safety skills. You are currently undertaking this programme. You do not administer medication in your current role.
You stated that you are very passionate about nursing and drew the panel’s attention to your character references, including one dated 2 October 2017 from your Clinical Theatre Manager, in which you are described as “a valued member of the theatre team.” It further states that “Her nursing care in the theatre environment has never been in question. There are no issues with regard to her practice.” You stated that you have learned from this experience and are confident that you do not pose a risk to any patients in your care.

The panel has accepted the advice of the legal assessor which included reference to a number of relevant judgments.

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

**Decision on misconduct**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Code and to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel had careful regard to your evidence, in relation to the specific charges. It was not entirely clear to the panel, in relation to each of the charges, whether your position was that you had not administered medication at all, or whether you had administered the wrong medication (in that it was not the medication set aside in the pre-prepared “Biodose” pods) and then not recorded it. It seemed to the panel that there may have been a combination of both circumstances. Whatever the situation, the panel has determined that both of those situations were fully covered by the wording of the charges and that your admission of those charges was fully justified.
The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to breaches of the following provisions of the Code:

1.2. Make sure you deliver the fundamentals of care effectively

1.4 Make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

10. Keep clear and accurate records relevant to your practice

13. Recognise and work within the limits of your competence

18. Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the lack of clarity as to whether medications had not been administered at all, or wrongly administered and not recorded, led to an unsafe clinical environment. The panel considered that consistency and accuracy in the administration and recording of medication is paramount. Failure to reach the required standards in this regard can result in serious patient harm. It could also result in fellow healthcare professionals being unable understand what medications have been administered. This could also have significant consequences for those patients. The panel was therefore satisfied that your actions did fall seriously short of what was expected of you as a registered nurse and amounted to misconduct.

**Decision on impairment**

The panel next went on to decide if as a result of this misconduct, your fitness to practise is currently impaired. In doing so, it had regard to the case of Grant, in which Mrs Justice Cox endorsed the test for current fitness to practice set out in the Fifth Shipman report:

“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction,
caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d…”

The panel determined that the first three limbs of this test were engaged. It was satisfied that, by failing to administer and/or record the administration of prescribed medication, you had put patients at risk of harm, had brought the profession into disrepute and breached a fundamental tenet of the profession.

The panel then went on to consider whether it was likely that you would do so again in the future. In assessing this risk, it had regard to your insight and remediation.

The panel considered that your reflective pieces showed good insight into your misconduct. You had addressed the potential impact of your actions on the patients whose care was compromised, as well as on your colleagues and the reputation of the profession. You accepted in evidence that you should not have continued to work in an environment in which you did not feel sufficiently competent. You are clearly very remorseful, and have engaged with the NMC.

The panel next considered whether you have fully remediated your practice. It had regard to the training you have undertaken, your references, and the fact that there have been no further incidents. The panel commended your efforts, but was concerned that your ability to administer medication safely may still fall short of the standards required of a registered nurse. The panel acknowledged the training you have
undergone, but, as you do not administer medication as part of your current role, it had no evidence as to your present ability to do so safely in a clinical environment. The panel is therefore of the view that there may be a risk of repetition, were you to practice again in a clinical environment which requires you to administer medication. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

**Determination on sanction:**

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case, and your written submissions on this issue. The panel accepted the advice of the legal assessor. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel first considered the aggravating and mitigating factors in this case. It considered the aggravating factors to be:

- Your misconduct concerned multiple medication failures over a number of days.
- The patients at the Home were vulnerable and your medication administration failures combined with the lack of clarity in the records presented a risk of significant harm.
• Your decision to continue working in an environment which you were not sufficiently experienced to work in, rather than effectively escalating your concerns to the Home Manager or the agency
• Your inability to stand up to a colleague in order to protect patients

The panel considered the mitigating factors to be
• There have been no previous or subsequent incidents in your nursing career
• You have shown genuine remorse and significant insight
• You were not familiar with the system of medication administration at the Home or the Home itself. Further, you did not receive a proper induction, and did try to ask for help
• You have independently sought training in medications management
• You have provided a positive reference from your current clinical manager.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action. The panel also concluded that a caution order would be inappropriate for the same reasons. It considered that some restriction on your practice was necessary to safeguard against the ongoing risk of harm to the public already identified.

The panel next considered whether placing conditions of practice 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 took into account the Sanctions Guidance, in particular:

• no evidence of harmful deep-seated personality or attitudinal problems
• identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining
• no evidence of general incompetence
• potential and willingness to respond positively to retraining
• patients will not be put in danger either directly or indirectly as a result of conditional registration
• the conditions will protect patients during the period they are in force
• it is possible to formulate conditions and to make provision as to how conditions will be monitored

The panel considered that all these factors were relevant in your case and determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel considered that the issues in this case were primarily concerned with the administration and documentation of medication, and was satisfied that these deficiencies in your practice could be addressed by conditions. The panel believed that you would be willing to comply with a conditions of practice order, given the remorse and insight you have shown.

Balancing all of these factors and after having taken into account both the aggravating and mitigating features of this case, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel considered the imposition of a suspension order, but was of the view that this would be disproportionate and would not be a reasonable response in the circumstances of your case. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practice as a nurse.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

1. Whilst working as a registered nurse you must not administer medication unless under the direct supervision of a registered nurse, until such time as you have been deemed competent to do so and signed off as such by a registered nurse of seniority not less than band 7 or above (or equivalent).
2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice
   a. Safe medication administration
   b. Record keeping

3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least once every 4 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.

4. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.

5. You must send a report from your line manager mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.

6. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment

7. You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
8. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.

9. a) You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

10. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC’s fitness to practise procedures and disclose the conditions listed at (1) to (9) above, to them

1. Any organisation or person employing, contracting with or using you to undertake nursing work

2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services

3. Any prospective employer (at the time of application) where you are applying for any nursing appointment

4. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

The period of this order is for 12 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order and addressed the identified failings in your
practice. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

**Determination on Interim Order**

The panel has considered the submissions made by Mr Renteurs that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim conditions of practice order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The conditions for the interim order will be the same as those detailed in the substantive order.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the conditions of practice order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.