

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting
9 April 2019**

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of registrant:	Alix Comrie Charlton
NMC PIN:	90E0451S
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (26 August 1993)
Area of Registered Address:	Scotland
Type of Case:	Misconduct
Panel Members:	John Vellacott (Chair, Lay member) Sharon Peat (Registrant member) Alex Forsyth (Lay member)
Legal Assessor:	Cyrus Katrak
Panel Secretary:	Alison Martin
Order being reviewed:	Suspension Order (12 months)
Fitness to Practise:	Impaired
Outcome:	Suspension Order (12 months) to come into effect at the end of 21 May 2019 in accordance with Article 30 (1)

Service of notice of meeting

The panel was informed at the start of this meeting that notice had been sent to Mrs Charlton on 18 February 2019 by recorded delivery and first class post to her registered address. The notice informed Mrs Charlton that her suspension order would be reviewed before its expiry at a meeting on or after 8 April 2019 and gave her the opportunity to request a hearing. The panel noted that no request for a hearing had been made by Mrs Charlton. The panel noted that notice of this hearing was delivered to Mrs Charlton's registered address on 26 February 2019 and was signed for by "A Charlton".

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Decision and reasons on review of the current order:

The panel decided to impose a further suspension order for a period of 12 months. This order will come into effect at the end of 21 May 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a suspension order, originally imposed by a Fitness to Practise panel on 20 April 2018 for 12 months. The current order is due to expire at the end of 21 May 2019.

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:

Details of charge:

That you, whilst employed as a registered nurse:

1. *Attended work under the influence of alcohol on:*

1.1. *20 March 2014*

1.2. *21 February 2015*

2.

3. *On 16 August 2014 did not administer and/or record that you had administered the following lunchtime medication:*

3.1. *Paracetamol to Patient A*

3.2.

3.3.

3.4. *In relation to Patient F*

3.4.1. *Paracetamol*

3.4.2. *Stalevo*

3.5. *In relation to Patient G:*

3.5.1. *Paracetamol*

3.5.2. *Adcal*

3.6. *In relation to Patient H:*

3.6.1. *Paracetamol*

3.6.2. *Hyoscine Butylbromide*

4.

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

The original panel determined the following with regard to impairment:

“Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a

finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel finds that, in Mrs Charlton's case, the first three limbs of Grant are engaged as, by attending work while under the influence of alcohol, Mrs Charlton exposed the vulnerable patients in her care to a serious risk of harm. Whilst no actual harm occurred to patients, working under the influence of alcohol put them at significant risk of errors in her judgement, decision making and communication abilities. The panel noted that failing to record medication administration correctly also exposes patients to risk of serious harm as they could be denied the required medication or given additional un-prescribed doses leading to serious consequences.

The panel was of the view that by attending work under the influence of alcohol, Mrs Charlton damaged her own professional reputation and also placed the reputation of the profession at risk of being brought [into] disrepute.

The panel also determined that correct recording of medication administration is a basic fundamental tenet of the nursing profession, as is working only when fit to do so. The panel found that by failing to record administration of medication and attending work under the influence of alcohol, Mrs Charlton has breached the fundamental tenets of the profession.

Regarding insight, the panel considered that during the internal investigation meetings, Mrs Charlton showed remorse and a degree of insight into her personal failings. The panel accepted that when being challenged on whether she was fit to work, Mrs Charlton had appeared to accept that she was not and left willingly when these concerns were raised with her. In the investigation meeting notes, Mrs Charlton demonstrated that she understood the risk she had exposed her patients to and was remorseful for her behaviour. However, the panel noted that this was evidence from over 3 years ago and the panel has no new evidence relating to Mrs Charlton's position at this time and no new information regarding any current or developing insight. In these circumstances, the panel was unable to reach any conclusion regarding Mrs Charlton's current

insight into the nature and extent of her failings, the consequences on others and the underlying causes of her behaviour.

In its consideration of whether Mrs Charlton has remedied her practice, the panel took into account that whilst her conduct is remediable with training and medical support, she has not engaged with proceedings and stated that she no longer wishes to work as a nurse. The panel also noted that, in respect of earlier drug errors, Mrs Charlton received supervision and training and was deemed competent by her clinical manager but then went on to make more errors.

The panel is of the view that there is a risk of repetition based on the lack of evidence of any efforts at remediation and any efforts being made by Mrs Charlton to address her health condition or clinical issues. The panel therefore decided that with no evidence of Mrs Charlton's current level of insight or any evidence of remediation, a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was also required due to the seriousness of the case and the risk to the reputation of the nursing profession.

Having regard to all of the above, the panel was satisfied that Mrs Charlton's fitness to practise is currently impaired."

The original panel determined the following with regard to sanction:

"The panel considered the relevant aggravating and mitigating factors in reaching its decision on the appropriate sanction.

The aggravating factor that the panel took into account, in particular, is:

- the real risk of harm to patients

The panel took into account the mitigating factors:

- Mrs Charlton is a skilled nurse with more than 25 years' experience
- Mrs Charlton's behaviour appears to have been influenced by an underlying health condition
- There are no previous regulatory concerns with Mrs Charlton's practice.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. 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 ("SG") 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 whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order 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.' The panel considered that Mrs Charlton's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Charlton's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the potential risk of harm to patients. The panel considered that it had no recent information from Mrs Charlton regarding her employment or health situation and could not be satisfied that she could or would comply with any conditions were they able to be formed.

Furthermore the panel concluded that the placing of conditions on Mrs Charlton's registration would not adequately address the seriousness of this case and would not protect the public. The panel therefore determined that a conditions of practice order was not a sufficient or appropriate sanction in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel determined that, although there had been a clear breach of a fundamental tenets of the profession, there are in Mrs Charlton's case, mitigating circumstances. As such, the panel considered that the misconduct was not fundamentally incompatible with Mrs Charlton remaining on the register.

The panel considered that Mrs Charlton's misconduct was not an isolated incident but it had no evidence to suggest that this represented any pattern of behaviour. The panel was satisfied that there was no evidence of any harmful or deep seated personality problems. The panel previously noted that Mrs Charlton had some insight into the seriousness of her misconduct but that it had no information as to her current position. The panel determined that there remained some risk of repetition of the misconduct found proved.

The panel further considered whether a striking-off order would be proportionate in Mrs Charlton's case. The panel considered that while Mrs Charlton's misconduct represented a serious departure from the standards expected of a registered nurse, no actual harm was caused to patients and she has not displayed any evidence of a deep seated personality issue or any persistent lack of insight. Taking account of all the information before it, and taking account of the relevant mitigating circumstances, particularly the high esteem in which Mrs Charlton's nursing practice was held by colleagues and her lengthy, previously unblemished, career, the panel concluded that it would be disproportionate to impose a striking off order. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Charlton's case to impose a striking off order.

Balancing all of these factors, whilst the panel concluded that the seriousness of the case required temporary removal from the register, it also concluded that a period of suspension would be sufficient to protect patients and the public interest. In these circumstances, the panel was satisfied that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order could cause Mrs Charlton. However this is outweighed by the need to protect the public and public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct and to provide Mrs Charlton sufficient time to fully reflect on her failings and consider her commitment to her nursing career. The panel considered that this period would

also allow Mrs Charlton to take steps to address any health matters which may impact on her fitness to practice.

At the end of the period of suspension, another panel will review the order. 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. Additionally, Mrs Charlton or the NMC may request an early review of the order if it is deemed necessary or if Mrs Charlton feels she has made sufficient progress in addressing the concerns of this panel.

Any future panel may be assisted:

- Mrs Charlton's attendance at a review hearing.
- Up to date information regarding any Mrs Charlton's current state of health
- Evidence of any employment undertaken (paid or un-paid)
- References and/or testimonials from employers and colleagues
- A reflective statement demonstrating Mrs Charlton's insight into her misconduct and her commitment to her nursing career."

Decision on current fitness to practise

The panel has considered carefully the papers before it as to whether Mrs Charlton'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 last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

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

The panel had regard to the fact that the onus of demonstrating that she is currently fit to practise is upon Mrs Charlton.

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 Mrs Charlton's fitness to practise remains impaired.

In addressing impairment the panel had regard to the test approved by Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin), specifically:

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 was of the view that limbs a), b) and c) of the test were engaged. The panel determined that Mrs Charlton has in the past put patients at an unwarranted risk of harm, brought the profession into disrepute and breached a fundamental tenet of the nursing profession.

Regarding Mrs Charlton's insight, the panel noted it has no new information regarding Mrs Charlton's current insight into the nature and extent of her failings, the consequences to others and the underlying causes of her behaviour.

In its consideration of whether Mrs Charlton has remedied her practice, the panel took into account that whilst her conduct is possibly remediable, Mrs Charlton has not engaged with proceedings and provided no evidence of this.

The panel determined that Mrs Charlton was liable to repeat matters of the kind found proved as it had no information before it that she has remediated the misconduct found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was 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 required.

For these reasons, the panel finds that Mrs Charlton's fitness to practise remains impaired.

Determination on sanction

Having found Mrs Charlton's 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 first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition, the seriousness of the case, and the absence of engagement by Mrs Charlton. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate for the same reason as taking no further action. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Charlton's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the potential risk of harm to patients. The panel considered that it had no recent information from Mrs Charlton regarding her employment or health situation and could not be satisfied that she could or would comply with any conditions were they able to be formed.

Furthermore the panel concluded that the placing of conditions on Mrs Charlton's registration would not adequately address the seriousness of this case and would not

protect the public. The panel therefore determined that a conditions of practice order was not a sufficient or appropriate sanction in this case.

The panel considered imposing a further suspension order. It was of the view that a suspension order would allow Mrs Charlton further time to engage with these fitness to practise proceedings and demonstrate to the next panel that she is taking steps to remediate her practice. The panel concluded that a further 12 month suspension order would be the appropriate and proportionate response and would afford Mrs Charlton adequate time to further develop her insight and remediation.

Mrs Charlton should be aware that a future panel may consider the full range of sanctions.

Any future panel may be assisted by:

- Mrs Charlton's attendance or engagement at a review hearing.
- Up to date information regarding any Mrs Charlton's current state of health.
- Evidence of any employment undertaken (paid or un-paid).
- References and/or testimonials from employers and colleagues.
- A reflective statement demonstrating Mrs Charlton's insight into her misconduct and her commitment to her nursing career.

Prior to the expiry of the order, it will be reviewed by another panel. At that review, the panel may allow the order to lapse, revoke the order or replace it with a different type of order. Alternatively, Mrs Charlton may request an early review of this order at any time if there has been a material change of circumstances.

This decision will be confirmed to Mrs Charlton in writing.

That concludes this determination.