

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing

15 August 2019

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Vivienne Elizabeth Pilkington-Vella
NMC PIN:	81Y0255E
Part(s) of the register:	Sub part 1 RN1: Adult nurse (27 January 1985)
Area of registered address:	England
Type of case:	Misconduct
Panel members:	Cindy Barnett (Chair, Lay member) Linda Jane Tapson (Registrant member) Andrew Macnamara (Lay member)
Legal Assessor:	Simon Walsh
Panel Secretary:	Maya Hussain
Ms Pilkington-Vella:	Not present and not represented
Nursing and Midwifery Council:	Katie Mustard, Case Presenter
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 30 September 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Pilkington-Vella was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Ms Pilkington-Vella on 4 July 2019 by recorded delivery and first class post to her registered address. It arrived and was signed for in the name 'V Pilkington' on 5 July 2019.

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).

Proceeding in the absence of Ms Pilkington-Vella

Ms Mustard submitted that no request for an adjournment had been made by Ms Pilkington-Vella and that she had voluntarily absented herself.

The panel then considered proceeding in the absence of Ms Pilkington-Vella. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Mustard. The panel accepted the advice of the legal assessor.

Ms Pilkington-Vella had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing.

The panel therefore concluded that she had chosen voluntarily to absent herself. The panel bore in mind that Ms Pilkington-Vella has not engaged with the NMC since her

original substantive hearing in 28 February 2017. It therefore had no reason to believe that an adjournment would result in Ms Pilkington-Vella's attendance. The panel further noted that this is a mandatory review as the order is due to expire at the end of 30 September 2019. Having weighed the interests of Ms Pilkington-Vella with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in her absence.

Decision and reasons on review of the current order:

The panel decided to impose a striking-off order. This will come into effect at the end of 30 September 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of an order. On 27 February 2017 a panel of the Conduct and Competence Committee originally imposed a conditions of practice order for a period of two years. The first review took place on 22 February 2018, a fitness to practise panel replaced the order with a suspension order for a period of six months. The current order is due to expire at the end of 30 September 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:

That you, a registered nurse, whilst employed as the Clinical Lead of Aaron Crest Care Home;

1. Whilst caring for Resident A On 29 July 2013

- a) failed to read Patient A's Care Plan adequately, regarding her PEG regime and medication*
- b) signed the drug chart indicating that Phenytoin had been administered when it had not*

2. Whilst caring for Resident B on 10 April 2014:

a) administered 3x300mg Gabapentin instead of the prescribed 3x100m

3. Whilst caring for Resident C on 14 April 2014:

a) incorrectly administered Lantus insulin and/or incorrectly recorded the administration of Lantus insulin by signing the MAR drug chart

b) documented Novorapid insulin on the Blood Sugar Monitoring Sheet but failed to record it on the MAR chart that these were administered

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

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

'The panel considered whether Ms Pilkington-Vella's fitness to practise remains impaired. It had no new information before it from Ms Pilkington-Vella to demonstrate any insight, remorse, or remediation.

The panel was concerned with Ms Pilkington-Vella's complete disengagement from the NMC process, and concluded that she had not demonstrated that she is safe to practise, and that she no longer poses a risk to patients.

The panel concluded that there remains a risk of repetition of the misconduct in question, and that a finding of impairment remained 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 and midwifery professions and upholding proper standards of conduct and performance. The panel determined that a finding of current impairment on public interest grounds is also required.

For these reasons, the panel is satisfied that Ms Pilkington-Vella's fitness to practise remains impaired.'

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

'The panel first considered whether to take no action but concluded that, in light of the ongoing public protection concerns, this would be inappropriate and insufficient in the light of the lack of remediation and risk of repetition identified in this case.

The panel then considered whether to impose a caution order but concluded that, for the same reasons, this too would be inappropriate and insufficient.

The panel next considered the imposition of a further conditions of practice order. As Ms Pilkington-Vella has not engaged with the NMC process since her substantive hearing, the panel could not be satisfied that she would be willing to engage with a further conditions of practice order. In all the circumstances the panel considered that a conditions of practice order is no longer workable in this case.

The panel carefully considered a suspension order. It concluded that a suspension order for a period of 6 months would be the appropriate, proportionate, and sufficient sanction. The panel noted Ms Pilkington-Vella's disengagement from NMC proceedings. However, in light of this being the first review of the substantive hearing, the panel decided that it would be proportionate to impose a suspension order on this occasion, as it would afford Ms Pilkington-Vella an opportunity to engage with the NMC.

The panel gave careful consideration to a striking off order, particularly in the light of Ms Pilkington-Vella's lack of engagement, but concluded that this would be a disproportionate sanction at this time. Whilst the panel was of the opinion that a striking off order could be justified, it was mindful of the principle of proportionality highlighted in the Sanctions Guidance and that the least restrictive sanction that provides satisfactory protection to the public and is fair, should be applied. Therefore the panel concluded that a suspension order is more appropriate at this time.'

The panel has had regard to all of the documentation before it in the NMC bundle. It has taken account of the submissions made by Ms Mustard on behalf of the NMC.

Ms Mustard provided a background of the case to the panel. She submitted that there has been no change in circumstances since the last review hearing and Ms Pilkington-Vella has continued to fail to engage with the NMC proceedings.

Ms Mustard submitted that after the substantive hearing which concluded on the 28 February 2017, Ms Pilkington-Vella was advised in writing as to what a reviewing panel may be assisted by when determining her current fitness to practise. Ms Mustard submitted that Ms Pilkington-Vella failed to follow any of the recommendations made by the substantive hearing.

At the review hearing in February 2019, the panel made further recommendations to Ms Pilkington-Vella and imposed a suspension order to give Ms Pilkington-Vella another opportunity to engage with the NMC. Ms Mustard submitted that in the absence of any insight or remediation, the risk of repetition of the behaviour found proved remains and her fitness to practise remains impaired. Ms Mustard drew the panel's attention to the previous panel's consideration of a striking off order in February 2019. Since that date there has been no change, no engagement and no fresh evidence. Under these circumstances, Ms Mustard invited the panel to impose a striking-off order.

Decision on current fitness to practise

The panel has considered carefully whether Ms Pilkington-Vella'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 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 Ms Pilkington-Vella's fitness to practise remains impaired. The panel noted the previous panel's decision in February 2019 to impose a six month suspension order in order for Ms Pilkington-Vella to have an opportunity to present any evidence as to her current fitness to practise to the hearing. Despite this, today's panel had no evidence of Ms Pilkington-Vella following the recommendations set out by that panel. This panel also did not have any further evidence of insight, remediation or remorse. In light of these failings, the panel determined that there remains a risk of repetition of the misconduct found proved.

The panel also noted Ms Pilkington-Vella's lack of engagement with today's regulatory proceedings. There has been no contact from Ms Pilkington-Vella since the original substantive hearing in February 2017.

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 a finding of current impairment on public interest as well as on public protection grounds is justified.

For these reasons, the panel finds that Ms Pilkington-Vella's fitness to practise remains impaired.

Determination on sanction

Having found Ms Pilkington-Vella'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 29 (5) 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 impose a caution order but concluded that it would be neither proportionate nor in the public interest to impose a caution order. The misconduct is too serious in this case.

The panel next considered the imposition of a conditions of practice order. The panel was satisfied that the misconduct found proved was potentially remediable. However, the panel determined that in light of Ms Pilkington-Vella's failure to engage with the recommendations made by previous panels, it could not be satisfied that Ms Pilkington-Vella would comply with a conditions of practice order.

The panel next considered imposing a further suspension order. The panel noted that Ms Pilkington-Vella had not provided any evidence of insight, remorse for her misconduct or remediation; she had not engaged with the NMC since February 2017. The panel noted that the previous review panel did consider striking Ms Pilkington-Vella's name off the register, but concluded that this sanction was disproportionate at that stage. Further, whilst the panel reminded itself that the misconduct found proved was potentially remediable, Ms Pilkington-Vella has not provided any evidence of remediation or insight into her failings.

The panel was of the opinion that the recommendations of the previous panel made very clear the steps Ms Pilkington-Vella could take to remediate her misconduct. The burden is on Ms Pilkington-Vella to address her impairment and she has not provided any evidence that she has done so.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances and therefore it decided that a further suspension order was not justified on the evidence before it. Ms Pilkington-Vella failed to attend this review hearing and had provided no documentary evidence. The seriousness of this case is incompatible with ongoing registration when all the circumstances are considered. The panel determined that it was necessary to take action to prevent Ms Pilkington-Vella from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Ms Pilkington-Vella in writing.

That concludes this determination.