

**Nursing and Midwifery Council
Fitness to Practise Committee**

Substantive Meeting

25 July 2019

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

Name of registrant:	Diane Mary Hyde
NMC PIN:	9113970E
Part(s) of the register:	RNA: Registered Nurse – (sub part 1) Adult – 12 September 1994
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Helen Potts (Chair, lay member) Andrew Wimbor (Registrant member) Rachel Jokhi (Registrant member)
Legal Assessor:	Douglas Readings
Panel Secretary:	Rob James
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim Order:	Interim suspension order (18 months)

Details of charge:

That you, a registered nurse,

1. On 30 November 2018, at the Chester Magistrates Court were convicted of one count of dishonestly making false representation to make gain for self/ another or cause loss to other/ expose other to risk.

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

Determination on service:

The panel has considered all the information provided and has heard and accepted the advice of the legal assessor.

The panel has concluded that service of notice has been effected in accordance with the Rules. The letter giving notice was posted by the Royal Mail 'signed for' service on 19 June 2019 to the registered address of Mrs Hyde, stating that a substantive meeting would take place on or after 23 July 2018.

The panel is satisfied that, in accordance with Rules 11(A) and 34 of the NMC Fitness to Practise Rules 2004, service of notice has been duly effected and sufficient notice has been given as required by the Rules.

Background

On 19 December 2018, Mrs Hyde was sentenced following conviction for dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk. She was sentenced to 12 months imprisonment suspended for 12 months during which she was required to carry out 60 hours of unpaid work and was ordered to pay £1,000 towards the cost of the prosecution and a victim surcharge of £140.

Mrs Hyde pleaded guilty on 30 November 2018 following allegations that she had committed an offence of fraud relating to making false representation for additional payments whilst working as a Registered Nurse at Ellesmere Port Hospital over an 18 month period namely between 1 January 2015 and 30 June 2016. Mrs Hyde had fraudulently made claims amounting to £10,462 or a net gain of just under £7,000 after tax.

The sentencing Judge said:

“You claimed for these additional payments for a lengthy period of some eighteen months before the matter was discovered. What you did was claim for additional payments for enhancements when you were on annual leave, and sick in fact, and those claims should never, of course, have been made. My understanding is that you started the frauds simply by mistakenly completing an application for enhancements which was then paid when it should not have been paid, and you perhaps realised how simple this might be and you carried on making such applications for enhancements, and you did so for a period of 18 months”.

(PRIVATE)

At the time of sentencing, it was said that Mrs Hyde had repaid “all but some of the £10,500” by working 50 hours per week for a nursing agency.

Decision on the findings on facts and reasons

The charges concern Mrs Hyde’s conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is

evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

Decision on impairment

The panel next went on to decide if as a result of this conviction, Mrs Hyde's fitness to practise is currently impaired.

The panel accepted the advice of the Legal Assessor on this issue.

Nurses occupy a position of privilege and trust in society. 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 76 she said:

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 took the view that Mrs Hyde's actions engaged parts b, c and d of the Grant judgment. It was clear that her actions, in fraudulently obtaining money, brought the nursing profession into disrepute and breached a fundamental tenet of the nursing profession, namely the requirement to promote professionalism and trust and to uphold the reputation of the profession at all times in accordance with The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code"). Further, her actions were dishonest.

The panel took account of the fact that Mrs Hyde has chosen not to attend a hearing before a panel of the Fitness to Practise Committee and has indicated that she no longer wishes to practise. The panel considered what steps Mrs Hyde had taken to remediate the conduct that had led to her conviction. It noted that she had repaid almost all of the £10,500 by working as an Agency Nurse. However, the panel had no evidence of any steps taken to address the attitudes and behaviours that had led to her offending.

The panel had regard to the fact that it had not been provided with any evidence of insight, for example by way of a reflective statement. There was no evidence that Mrs Hyde understood the impact that her conviction has had on not only the reputation of the nursing profession but also her colleagues and the public. Further, the panel had no evidence that Mrs Hyde had demonstrated any remorse for her actions. She had denied the fraudulent claims throughout the investigation conducted by her employer and had not admitted them until the hearing at the Magistrates Court.

The panel noted that the money that Mrs Hyde had fraudulently obtained came from the public purse and that in his sentencing remarks the Judge had stated that, for sentencing purposes, she fell within the category of "high culpability".

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 required. It was of the view that the public would consider Mrs Hyde's dishonest actions to be deplorable and a serious abuse of trust.

The panel took account of the fact that Mrs Hyde's actions did not relate to her clinical practice. The patients in her care were not put at risk of harm as a result of her fraudulent actions.

Having regard to all of the above, the panel was satisfied that Mrs Hyde's fitness to practise is currently impaired by reason of her conviction.

Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Hyde off the register. The effect of this order is that the NMC register will show that Mrs Hyde has been struck off the register.

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 the NMC guidance on “considering sanctions for serious cases” and in particular those relating to dishonesty. The panel was of the view that Mrs Hyde’s dishonesty was serious and that it demonstrated:

- personal financial gain from a breach of trust and
- premeditated, systematic or longstanding deception

The panel also took account of the NMC guidance in relation to considering “Cases involving criminal convictions or cautions”.

The panel considered the following to be aggravating factors:

- Mrs Hyde committed the fraudulent actions while working in a position of trust;
- There is no evidence that Mrs Hyde has demonstrated any insight into her actions;
- Mrs Hyde’s fraudulent actions were over a sustained period of time and involved claiming for almost £10,500 to which she was not entitled;
- Mrs Hyde was already on a good basic salary working as a Band 7 Registered Nurse.

The panel considered the following to be mitigating factors:

- Mrs Hyde had, by the time of sentencing, repaid almost the entirety of the money fraudulently claimed;
- She is previously of good character;
- (PRIVATE)

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the conviction. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Furthermore, the panel had regard to the principle that it would undermine public confidence in the profession if a registrant were permitted to return to practice during the currency of a suspended sentence.

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 Hyde's behaviour and subsequent conviction was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the conviction. 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 Hyde'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 took into account the SG.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the seriousness of this case alongside Mrs Hyde's lack of engagement with the NMC and thus lack of willing to work under conditions.

Furthermore, the panel concluded that the placing of conditions on Mrs Hyde's registration would not adequately address the seriousness of the conviction and would not protect the public or address the public interest in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order may be appropriate where (but not limited to) there is:

- a single instance of misconduct but where a lesser sanction is not sufficient

- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

Mrs Hyde's actions, as highlighted by her conviction, were a significant departure from the standards expected of a registered nurse and involved fraudulently procuring a large amount of money from the public purse over a significant period of time and resulted in a 12 month suspended prison sentence. The panel considered that Mrs Hyde's prolonged and serious dishonesty was a breach of a fundamental tenet of the profession and was fundamentally incompatible with her remaining on the register. Mrs Hyde has chosen not to attend before a panel, to demonstrate, should she have wished to, insight into the effect that her actions have had on the reputation of the nursing profession, the patients in her care or her colleagues.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from the SG:

- can public confidence in the professions and the NMC be maintained if the nurse or midwife is not removed from the register?
- is striking-off the only sanction which will be sufficient to protect the public interest?
- is the seriousness of the case incompatible with ongoing registration.

Mrs Hyde's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. Further, her actions were prolonged and demonstrated attitudinal issues. The panel was of the view that her conviction demonstrates that Mrs Hyde's actions were serious and

to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Hyde's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was 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.

Determination on Interim Order

Pursuant to Article 29 (11) of the Nursing and Midwifery Order 2001, this panel's decision will not come into effect until after the 28 day appeal period, which commences from the date that notice of the suspension order has been served.

Article 31 of the Nursing and Midwifery Order 2001 outlines the criteria for the imposition of an interim order. The panel may only make an interim order if it is satisfied on one or more of three grounds; that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Hyde's own interests. The panel may make an interim order for a maximum of 18 months.

The panel heard and accepted the advice of the legal assessor. It has also had regard to the NMC's guidance to panels in considering whether to make an interim order. The panel has taken into account the principle of proportionality, bearing in mind the balance it must strike between the interests of the public and those of Mrs Hyde.

The panel has decided to impose an interim suspension order in this case. The panel is satisfied that such an order is necessary on the grounds of public protection 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 suspension order. To do otherwise would be incompatible with its earlier findings.

In the circumstances the panel considered that an interim suspension order for a period of 18 months would be appropriate in order to cover the period of any possible appeal.

If no appeal is lodged then the interim suspension order will be replaced by the striking off order 28 days after Mrs Hyde is sent the decision of this hearing in writing.

That concludes this determination.