

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

Substantive Order Review Meeting

19 June 2019

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

Name of registrant: Philomena Adair

NMC PIN: 70F0011N

Part(s) of the register: Nursing - Sub part 2
RN 7: Registered Nurse - General (Level 2)
(17 August 1972)

Area of Registered Address: Northern Ireland

Type of Case: Misconduct

Panel Members: Deborah Jones (Chair, Lay member)
Diane Gow (Registrant member)
Diane Meikle (Lay member)

Legal Assessor: Gerard Coll

Panel Secretary: Tara Hoole

Order being reviewed: Suspension order (9 months)

Fitness to Practise: Impaired

Outcome: Striking-off order to come into effect on 2
August 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this meeting that notice had been sent to Mrs Adair on 24 April 2019 by recorded delivery and first class post to her registered address. The notice informed Mrs Adair that her suspension order would be reviewed before its expiry at a meeting on or after 17 June 2019 and gave her the opportunity to request a hearing. The panel noted that there has been no response from Mrs Adair.

The panel noted that notice of this hearing was delivered to Mrs Adair's registered address on 24 April 2019 and signed for in the printed name of "ADAIR".

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 11A 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 striking off order. This order will come into effect at the end of 2 August 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 3 October 2018 for nine months. The current order is due to expire on 2 August 2019.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

That you, a registered nurse, on 25 March 2017 at Comber Care Home,

1 Having become aware that Resident A had a large haematoma on her leg, did not:

1.1 Complete wound documentation, including:

1.1.2 Initial wound assessment;

1.1.3 Body map;

1.1.4 Care plan;

1.1.5 Datix report;

1.2 Take any photographs of the wound;

1.3 Complete and/or record that you had completed baseline observations.

2 After the haematoma had ruptured:

2.1 Did not take any photographs of the wound;

2.2 Did not complete the relevant documentation, including:

2.2.2 Care plan;

2.2.3 Datix report;

2.2.4 Medication records;

2.2.5 Progress sheets;

2.3 Did not identify and/or record the potential issues that could arise from the fluid loss;

2.4 Did not complete and/or record that you had completed baseline observations;

2.5 Did not contact the GP again and/or request that another member of staff do so;

2.6 Did not request that a medical practitioner review the wound and/or request that another member of staff make this request;

2.7 Did not carry out extra observations of Resident A and/or inform another member of staff that they should do so;

2.8 Did not complete an adequate handover to Colleague A before you went off duty;

- 2.9 *Inappropriately placed the saturated bandages of Resident A, which showed extensive fluid loss, in a filing cabinet and left them there when you went off duty;*
- 2.10 *Before going off duty, did not notify any member of staff on duty that you had placed the saturated bandages of Resident A in a filing cabinet;*
- 3 *Did not ensure that the home was adequately staffed during your shift.*

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

“The panel considered Mrs Adair’s misconduct to be remediable, however, there was no evidence before it to suggest that Mrs Adair had remediated her misconduct. The panel noted that although Mrs Adair had expressed some remorse, in the absence of any evidence of remediation or insight there remained a real risk of repetition.

The panel kept in mind that the incident was isolated, however, it was of the view that the public would find Mrs Adair’s misconduct deplorable. Further, the panel noted that the resident involved was vulnerable.

On the basis of the information before it, the panel decided that Mrs Adair’s fitness to practice is impaired on both grounds of public protection and the public interest.

Having regard to all of the above, the panel was satisfied that Mrs Adair’s fitness to practise is currently impaired.”

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

“The panel noted that there had been no previous referrals to the NMC and that the incident was a one-off in an otherwise long and unblemished nursing career. The panel was mindful that during the investigation Mrs Adair showed some remorse. The panel also bore in mind that the patient was vulnerable and had specific care needs which Mrs Adair failed to meet.

The panel first considered whether to take no action but decided that it would not be appropriate or proportionate. The panel decided that to take no action would not address the risk to the public nor satisfy the public interest concerns.

Similarly, the panel considered whether to make a caution order but decided that it would not be appropriate or proportionate. The panel decided that a caution order would also not address the risk to the public nor satisfy the public interest concerns.

The panel next considered whether placing conditions of practice on Mrs Adair'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 Sanctions Guidance (SG).

The panel considered that, in principle, as the concerns in this case relate to patient care, conditions of practice could be formulated. However, Mrs Adair is not currently working as a registered nurse and the panel has no information as to how any conditions could be implemented or whether Mrs Adair would be willing to comply with any conditions. The panel therefore decided that a conditions of practice order would not be practicable.

The panel then went on to consider whether a suspension order would be an appropriate sanction. SG paragraph 68 indicates that a suspension order may be appropriate where some of the following factors are apparent:

- A single incident of misconduct but where a lesser sanction is not sufficient*
- No evidence of harmful or deep-seated personality or attitudinal problems*
- No evidence of repetition of the behaviour since the incident*

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

The panel further considered whether a striking-off order would be proportionate in Ms Adair's case. Taking account of all the information before it, including the mitigation, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Adair's case to impose a striking off order. Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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 9 months was appropriate in this case to mark the seriousness of the misconduct.

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. Any future panel may be assisted by evidence of:

- *A reflective piece*
- *Submissions in relation to Mrs Adair's future intentions in regard to her career as a registered nurse*
- *References from any recent health care employers"*

Decision on current fitness to practise

The panel has considered carefully whether Mrs Adair'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.

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 Mrs Adair's fitness to practise remains impaired.

Regarding Mrs Adair's insight, the panel noted that the last panel concluded that although Mrs Adair had expressed some remorse, in the absence of any evidence of remediation or insight there remained a real risk of repetition. This panel has no new information before it to determine whether Mrs Adair's insight has developed in the last nine months or whether she has taken any steps to remedy her practice.

The last panel determined that Mrs Adair was liable to repeat matters of the kind found proved. This panel has received no information to determine that there is no longer a risk of repetition of these failings. In light of this the panel determined that Mrs Adair remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is 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 profession and

upholding proper standards of conduct and performance. The panel has determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Determination on sanction

Having found Mrs Adair'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 identified and seriousness of the case. 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 but concluded that this would also be inappropriate in view of the risk of repetition identified and seriousness of the case. In addition, having found Mrs Adair's fitness to practise impaired on public protection grounds a caution order would provide no restriction on her practice. The panel therefore determined that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. Whilst the panel was of the view that Mrs Adair's failings were, in theory, remediable this would require engagement from Mrs Adair. The panel therefore concluded that there were no workable or practicable conditions which could be formulated which would address the public protection and public interest identified in this case in light of Mrs Adair's non-engagement.

The panel next considered imposing a further suspension order. The panel considered that Mrs Adair has now been under a suspension order for nine months and has not engaged with the NMC process or complied with any of the clear recommendations of the previous panel. The panel noted that although Mrs Adair had expressed some remorse and made admissions to the charges prior to the substantive hearing, she has not demonstrated any insight into, or remediation of, her previous failings. The panel was of the view that the ongoing risk to the public therefore remains. The panel noted that Mrs Adair had previously applied for voluntary removal from the NMC Register and took the view that her lack of engagement could be explained by her wish to no longer be a nurse. In view of the above the panel determined that a further period of suspension would not serve any useful purpose.

In addition, the panel considered that it was not in the public interest to continually suspend a nurse without any prospect of a resolution, nor does the panel believe it is in Mrs Adair's interest. The panel considered that public confidence in nurses could not be maintained by allowing Mrs Adair to remain on the register. It considered that, in the circumstances, Mrs Adair's failings, along with the lack of any evidence of insight or remediation, are fundamentally incompatible with her remaining on the register. The panel therefore determined that it was necessary to take action to prevent Mrs Adair 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. The panel therefore directs the registrar to strike Mrs Adair's name off the register.

In accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 this striking-off order will come into effect upon the expiry of the existing suspension order, namely at the end of 2 August 2019.

This decision will be confirmed to Mrs Adair in writing.

That concludes this determination.