

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

Substantive Order Review Meeting

26 June 2019

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

Name of registrant: Mrs Valerie Ann Arthur

NMC PIN: 04C0041W

Part(s) of the register: Nursing – Sub part 1
RNA: Registered Nurse – Adult
(27 March 2007)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Deborah Jones (Chair, lay member)
Linda Pascall (Registrant member)
Rama Krishnan (Lay member)

Legal Assessor: Graeme Henderson

Panel Secretary: Tara Hoole

Order being reviewed: Conditions of practice order (12 months)

Fitness to Practise: Impaired

Outcome: Striking-off order to come into effect at the end of 5 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 Arthur on 7 May 2019 by recorded delivery and first class post to her registered address. The notice informed Mrs Arthur that her conditions of practice order would be reviewed before its expiry at a meeting on or after 24 June 2019 and gave her the opportunity to request a hearing.

The panel noted the telephone note of a conversation between the NMC and Mrs Arthur on 2 May 2019, in which she agreed for her review to be heard at a meeting.

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 5 August 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 3 March 2017 for twelve months. The order was reviewed on 22 February 2018 and extended for four months. This order was reviewed on 22 June 2019 and extended for a further twelve months. The current order is due to expire on 5 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, whilst employed at Brocastle Manor Nursing Care Home:

1. On or about 21 January 2015:

1.1 Administered Doxycycline 100mg and/or Prednisilone 20mg to Patient A, when in fact it was prescribed for Patient B;

1.2 Documented in Patient B’s MAR chart that the medications referred to in charge 1.1 above had been administered to Patient B, when that was not the case.

2. On 2 January 2015 prepared to administer a dose of Lofepamine and/ or Paracetamol to a patient, when that medication had already been given.

3. On or about 10 December 2014:

3.1 Did not obtain a counter signature when entering Butrans patch and/ or Fentanyl medication into Patient C’s MAR chart;

3.2 Did not enter Patient C’s Butrans Patch and/ or Fentanyl medication into the controlled drugs book;

3.3 Used tipex/whiteout to correct an entry on Patient C’s MAR chart in respect of Trazadone medication, when it was not appropriate to do so.

That you, a registered nurse, whilst employed at Southmead Grange Care Home:

4. On or about 6 June 2015 inappropriately asked a non-qualified colleague to administer medication to Patient D;

5. On 14 June 2014 inappropriately asked a non-qualified colleague:

- 5.1 to dispose of medication in the bin;
- 5.2 to administer medication to Patient E;

6. On 14 June 2014 inappropriately asked Patient F's relative to administer medication to Patient F.

AND in light of the above your fitness to practise is impaired by reason of your misconduct”

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

“The panel noted that Mrs Arthur has engaged with the NMC through the RCN and has provided some information about her recent and current circumstances. From the information available to the panel it is apparent that Mrs Arthur has not worked as a nurse since August 2015. Although Mrs Arthur had provided limited evidence of insight and initial steps to attempt to remedy her clinical practice, these were not complete and she has not been able to fully comply with the conditions imposed on her at the substantive hearing. The panel therefore had little evidence before it to suggest that Mrs Arthur's fitness to practise is no longer impaired.

In light of the information available, the panel considered that Mrs Arthur has not been able to demonstrate the level of insight and remediation necessary to address the concerns identified in her clinical practice. Were she to continue in nursing practice, the panel considered that there would be a risk of repetition and therefore a risk of harm to patients. The panel therefore concluded that Mrs Arthur's fitness to practise remains impaired.”

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

“The panel first considered whether to impose a caution order 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 impose a caution order.

The panel next considered extending the conditions of practice order. The panel was of the view that the current conditions of practice are proportionate and workable should Mrs Arthur wish to return to nursing. The panel considered that an extension of the conditions of practice order is sufficient to protect the public and serve the wider public interest, noting as the original panel did that there was no evidence of general incompetence, no deep seated attitudinal problems and that the misconduct related to a specific area of clinical practice which could be addressed by a conditions of practice order. The panel noted that the RCN on her behalf had written that she has no objection to the continuation of the conditions of practice order.

The panel noted that Mrs Arthur has an ongoing separate referral at the NMC. The panel was of the view that a further conditions of practice order for a period of 12 months would not only protect the public and serve the public interest but may also serve a useful purpose whilst the other referral is being investigated. The panel considered that it would be disproportionate to suspend Mrs Arthur's registration.

Accordingly, the panel determined, pursuant to Article 30(1) (a) of the Nursing and Midwifery Order 2001, to extend the conditions of practice order for a period of 12 months. This will come into effect on the expiry of the current order. The panel was satisfied that the current conditions of practice remain appropriate and proportionate in this case:

1. a) When administering medications, you must be directly supervised by a Registered Nurse of Band 5 or above until you have been assessed and deemed competent to administer medications independently.

- b) At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the indirect supervision of a workplace line manager, mentor or supervisor nominated by

your employer, such supervision to consist of working at all times on the same floor and/or unit as another registered nurse.

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:
 - a. Medication administration; and
 - b. Recording clear timely and concise documentation;
3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month 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 six months 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 disclose a report not more than 28 days old 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 any current and prospective employers (at the time of application) 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.
8. You must notify the NMC within seven days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
9. You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.
10. You must immediately inform the following parties that 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:
 - a. Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work
 - b. Any agency you are registered with or apply to be registered with (at the time of application)
 - c. Any prospective employer (at the time of application)
 - d. 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 such a course (at the time of application)."

Decision on current fitness to practise

The panel has considered carefully whether Mrs Arthur'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 details of the telephone conversation between the NMC and Mrs Arthur on 2 May 2019.

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 Arthur's fitness to practise remains impaired.

Regarding Mrs Arthur's insight, the panel noted that the last panel found that Mrs Arthur had provided limited evidence of insight and, although she had taken initial steps to attempt to remedy her clinical practice, she had not been able to comply with the conditions of practice order. This panel has no new information before it to determine whether Mrs Arthur's insight has developed in the last 12 months. The panel noted, from the telephone note dated 2 May 2019, that Mrs Arthur has expressed that she does not intend to return to nursing and that she has not practiced for four years. In light of this the panel concluded that Mrs Arthur has not remedied the failings in her practice.

The last panel determined that Mrs Arthur 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 Arthur 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 Arthur's fitness to practise remains impaired.

Determination on sanction

Having found Mrs Arthur'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 order 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 Arthur'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 continuing the current conditions of practice order. The panel noted that Mrs Arthur has now been under a conditions of practice order for a total of 28 months. The panel reminded itself that Mrs Arthur has not practiced as a nurse for four years. The panel noted that this case relates to serious clinical errors

involving basic nursing skills and considered that Mrs Arthur's clinical skills and knowledge will have been adversely affected by the passage of time. The panel therefore concluded that, given the lack of progress in securing employment as a nurse and her expressed intention not to return to nursing, a conditions of practice order was no longer workable. It would no longer be satisfactory to address the public protection and public interest identified in this case.

The panel next considered imposing a suspension order. The panel noted Mrs Arthur has not demonstrated any further insight or remediation of her failings. The panel was of the view that the ongoing risk to the public remains.

The panel noted that Mrs Arthur, on 2 May 2019, confirmed she does not intend to return to nursing. The panel noted the impact these proceedings are purportedly having on Mrs Arthur's health, although the panel does not have any independent medical evidence of this. The panel noted that at the last review hearing Mrs Arthur's representative had advised by letter that "Mrs Arthur has now retired from nursing and would be applying for voluntary removal from the register as soon as it is appropriate". The panel noted that voluntary removal from the Register is not possible whilst a substantive order is in place. In all the circumstances the panel considered it would be unkind to impose a further cycle of reviews of this order when Mrs Arthur has expressed a clear desire to leave the profession. The panel determined that a period of suspension would not serve any useful purpose and would likely prolong this process unnecessarily for Mrs Arthur.

Further, the panel considered that it was not in the public interest to continually subject a nurse to a substantive order when it is clear they no longer wish to practice. Nor does the panel consider it to be in Mrs Arthur's interests.

The panel considered that public confidence in nurses could not be maintained by allowing Mrs Arthur to remain on the Register. The panel considered that the most appropriate sanction in this case in order to conclude matters for Mrs Arthur and to protect the public and serve the public interest was that of a striking-off order. The panel therefore directs the registrar to strike Mrs Arthur'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 5 August 2019.

This decision will be confirmed to Mrs Arthur in writing.

That concludes this determination.