

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

Substantive Order Review Hearing

10 June 2019

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

Name of registrant:	Louise Baxter
NMC PIN:	95C0098S
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) February 1998
Area of Registered Address:	Scotland
Type of Case:	Misconduct
Panel Members:	Tim Mann (Chair, Lay member) Lucie Moore (Registrant member) Jennifer Childs (Registrant member)
Legal Assessor:	Fiona Moore
Panel Secretary:	Tara Hoole
Miss Baxter:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by Nasreen Anderson, NMC Case Presenter
Order being reviewed:	Suspension Order (12 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect on 26 July 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Baxter was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Baxter on 10 May 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Miss Baxter's registered address on 11 May 2019 and signed for in the printed name "L BAXTER".

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 absence

The panel then considered proceeding in the absence of Miss Baxter. 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 Anderson, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Anderson submitted that Miss Baxter did not attend the substantive hearing and there has been no response to the notice of hearing nor the NMC Case Officer's attempts to contact her. Ms Anderson submitted that Miss Baxter previously, in 2018, applied for voluntary removal from the register which indicates that she does not wish to remain on the register. Ms Anderson therefore submitted that Miss Baxter had

voluntarily absented herself from today's proceedings. Ms Anderson therefore invited the panel to proceed in Miss Baxter's absence.

The panel noted that there had been no response from Miss Baxter in relation to the notice of hearing or the emails from her NMC Case Officer dated 28 May 2019 and 7 June 2019, enquiring whether Miss Baxter would be attending today's hearing. The panel was mindful that Miss Baxter has not engaged with the NMC in over a year.

Miss Baxter had been sent notice of today's hearing and the panel was satisfied that she was or should be aware of today's hearing and it was of the view that she had chosen to disengage. The panel, therefore, concluded that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Miss Baxter's attendance. Having weighed the interests of Miss Baxter with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Miss Baxter absence.

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 26 July 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 26 June 2018 for 12 months. The current order is due to expire on 26 July 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,

- 1) On or around 27 April 2016 cut wires within the call bell / falls alarm system at the Home;

- 2) On a night shift commencing 11 February 2017:
 - a) Failed to administer one or more of ferrous fumarate, paracetamol, and senna to Resident 1;
 - b) Signed Resident 1's MAR chart to indicate that you had administered the medications at a) above, when you had not;
 - c) Failed to administer one or more of simvastatin and trazodone to Resident 2;
 - d) Signed Resident 2's MAR chart to indicate that you had administered the medications at c) above, when you had not;
 - e) Failed to administer one or more of amitriptyline, bisacodyl, colecalciferol, ferrous sulphate, mirtazapine, and paracetamol to Resident 3;
 - f) Signed Resident 3's MAR chart to indicate that you had administered the medications at e) above, when you had not;
 - g) Failed to administer senna to Resident 4;
 - h) Signed Resident 4's MAR chart to indicate that you had administered the medication at g) above, when you had not;
 - i) Failed to administer one or more of folic acid, and mirtazapine to Resident 5;
 - j) Signed Resident 5's MAR chart to indicate that you had administered the medications at i) above, when you had not;
 - k) Failed to administer one or more of phenytoin sodium, and thiamine to Resident 6;
 - l) Signed Resident 6's MAR chart to indicate that you had administered the medications at k) above, when you had not;
 - m) Failed to administer one or more of mirtazapine, and phenytoin sodium to Resident 7;
 - n) Signed Resident 7's MAR chart to indicate that you had administered the medications at m) above, when you had not;
 - o) Failed to administer mirtazapine to Resident 8;

- p) Signed Resident 8's MAR chart to indicate that you had administered the medication at o) above, when you had not;
- q) Failed to administer senna to Resident 9;
- r) Signed Resident 9's MAR chart to indicate that you had administered the medication at q) above, when you had not;
- s) Failed to administer one or more of paracetamol, laxido, and zopiclone to Resident 10;
- t) Signed Resident 10's MAR chart to indicate that you had administered the medications at s) above, when you had not;
- u) Failed to administer mirtazapine to Resident 11;
- v) Signed Resident 11's MAR chart to indicate that you had administered the medication at u) above, when you had not;
- w) Failed to administer tramadol to Resident 12;
- x) Signed Resident 12's MAR chart to indicate that you had administered the medication at w) above, when you had not;

3) On a night shift commencing 12 February 2017:

- a) Failed to administer one or more of ferrous fumarate, paracetamol, and senna to Resident 1;
- b) Signed Resident 1's MAR chart to indicate that you had administered the medications at a) above, when you had not;
- c) Failed to administer one or more of simvastatin and trazodone to Resident 2;
- d) Signed Resident 2's MAR chart to indicate that you had administered the medications at c) above, when you had not;
- e) Failed to administer one or more of amitriptyline, bisacodyl, colecalciferol, ferrous sulphate, mirtazapine, and paracetamol to Resident 3;
- f) Signed Resident 3's MAR chart to indicate that you had administered the medications at e) above, when you had not;
- g) Failed to administer senna to Resident 4;
- h) Signed Resident 4's MAR chart to indicate that you had administered the medication at g) above, when you had not;
- i) Failed to administer one or more of folic acid, and mirtazapine to Resident 5;

- j) Signed Resident 5's MAR chart to indicate that you had administered the medications at i) above, when you had not;
 - k) Failed to administer one or more of phenytoin sodium, and thiamine to Resident 6;
 - l) Signed Resident 6's MAR chart to indicate that you had administered the medications at k) above, when you had not;
 - m) Failed to administer one or more of mirtazapine, and phenytoin sodium to Resident 7;
 - n) Signed Resident 7's MAR chart to indicate that you had administered the medications at m) above, when you had not;
 - o) Failed to administer mirtazapine to Resident 8;
 - p) Signed Resident 8's MAR chart to indicate that you had administered the medication at o) above, when you had not;
 - q) Failed to administer senna to Resident 9;
 - r) Signed Resident 9's MAR chart to indicate that you had administered the medication at q) above, when you had not;
 - s) Failed to administer one or more of paracetamol, laxido, and zopiclone to Resident 10;
 - t) Signed Resident 10's MAR chart to indicate that you had administered the medications at s) above, when you had not;
 - u) Failed to administer mirtazapine to Resident 11;
 - v) Signed Resident 11's MAR chart to indicate that you had administered the medication at u) above, when you had not;
 - w) Failed to administer tramadol to Resident 12;
 - x) Signed Resident 12's MAR chart to indicate that you had administered the medication at w) above, when you had not;
- 4) Since 9 May 2017 until around 10 May 2018 failed to co-operate with the NMC's investigation in that you did not respond to letters, telephone calls, and / or emails."

The original panel determined the following with regard to impairment:

“The panel considered whether Ms Baxter’s conduct is capable of remediation. The panel took the view that, although Ms Baxter’s failings relate to wide ranging medication administration errors and a safety issue, they are remediable. However, the panel had no information before it to suggest whether Ms Baxter has remediated her shortcomings. In the absence of any information, the panel concluded that there remains a risk of repetition of conduct of such kind.

The panel noted that references had been made to Ms Baxter’s health condition in the internal investigation that was undertaken, however the panel had no evidence before it to suggest that Ms Baxter’s failings occurred as a result of her health condition. The panel also had no independent medical evidence of Ms Baxter’s health condition.

The panel considered whether Ms Baxter has demonstrated any insight or remorse into her shortcomings. The panel noted that Ms Baxter made comprehensive admissions to all of the charges but concluded that there is a lack of real insight into the nature and extent of her failings. The panel was of the view that Ms Baxter has not shown or provided this panel with any evidence that she appreciated or had reflected on the serious nature and extent of her failings and omissions or the impact her conduct could have had on her colleagues, the residents and the public confidence in the nursing profession. The panel determined that it has no evidence to give it any reassurance that failings of this nature will not be repeated in the future. The panel further determined that a finding of no impairment would undermine public confidence in the profession and the NMC as its regulator.

The panel therefore determined that Ms Baxter’s fitness to practise is currently impaired on both public protection and public interest grounds.”

The original panel determined the following with regard to sanction:

“The panel first considered the mitigating and aggravating factors. These were as follows:

Aggravating:

- Ms Baxter has demonstrated minimal insight into her misconduct; and
- The residents under Ms Baxter's care were particularly vulnerable and her actions caused patient harm to one resident but could have put other patients at a serious risk of harm;

Mitigating:

- Ms Baxter had a long and unblemished career of almost 20 years prior to this referral;

The panel considered the following sanctions, beginning with the least restrictive:

- Take no further action:

The panel concluded that this would be wholly inappropriate in view of the seriousness of the findings in this case. The panel decided that it would be neither proportionate nor in the public interest to take no further action, as it was mindful of the public protection and public interest issues it had identified. The panel noted that it had no evidence before it to suggest that Ms Baxter is no longer a risk to the public.

- Make a caution order for one to five years:

The panel noted that a caution order would not be appropriate in view of its earlier findings. The panel noted that this case is not at the lower end of the spectrum and therefore imposing a caution order would be disproportionate. The panel was of the view that a caution order would fail to mark the public protection and public interest issues it had identified.

- Make a conditions of practice order for no more than three years:

The panel noted its previous finding that Ms Baxter's misconduct is remediable. The panel was of the view that a conditions of practice order would require Ms Baxter to actively engage with the NMC and demonstrate that she is willing to comply with conditions of practice. However, the panel had no evidence before it to suggest that Ms Baxter would be willing to co-operate or comply with a conditions of practice order. The panel took into account that Ms Baxter has explicitly stated that she will not be seeking work in any caring capacity. The panel was therefore of the view that a conditions of practice order would be wholly inappropriate in this case and that it would not be able to formulate workable or proportionate conditions.

- Make a suspension order for a maximum of one year:

The panel determined that a suspension order would serve the public protection and public interest issues it had identified. It was of the view that a 12 month suspension order would give Ms Baxter ample time to potentially remediate and reflect on her failings and demonstrate ongoing and developing insight. The panel noted that Ms Baxter has explicitly stated that she does not intend to seek work in a caring capacity, however it also noted that Ms Baxter has been a Registered Nurse for around 20 years and that her views have been expressed as part of her very late engagement with the NMC. The panel therefore considered that this period of suspension will provide her the opportunity to reconsider her position now she has engaged with the NMC and potentially change her intentions. The panel also noted that reference was made during the internal investigation at the Home to a health condition which, potentially, might provide some explanation to Ms Baxter's actions in 2016 and 2017, although it had no independent medical evidence of the existence of any such condition or how it might have contributed to Ms Baxter's actions. The panel formed the view that this period of suspension would also allow Ms Baxter, if she wished, to provide independent evidence of any health condition from which she was suffering in 2016/2017 and any ongoing health concerns. In all the circumstances the panel was satisfied that a suspension order would be the appropriate and proportionate sanction. The panel determined that the seriousness of the failures are sufficient to require temporary removal from the register.

- Make a striking-off order:

The panel was of the view that although a striking-off order would protect the public and serve the public interest, it is not the only sanction that would be sufficient for these purposes. The panel noted that Ms Baxter's misconduct is remediable and is not fundamentally incompatible with ongoing registration. The panel therefore determined that a striking off order would be disproportionate and punitive at this stage.

Therefore, the panel concluded that a 12 month suspension order would be the appropriate and proportionate sanction.

This order must be reviewed before its expiry. A future committee reviewing this order will be assisted by:

- 1) Ms Baxter's engagement with the regulatory process;
- 2) Ms Baxter's attendance at the hearing, either in person or remotely;
- 3) Ms Baxter to provide a reflective piece which demonstrates her ongoing and developing insight into her failings;
- 4) Independent medical evidence into any past or ongoing medical condition(s);
- 5) References from past and/or current employers, paid or unpaid;
- 6) Evidence of any learning or course(s) undertaken relating to medicines management."

Decision on current fitness to practise

The panel has considered carefully whether Miss Baxter'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. It has taken account of the submissions made by Ms Anderson on behalf of the NMC.

Ms Anderson took the panel through the background to this case. She submitted there was no new information before the panel, with the possible exception of the outcome of Miss Baxter's voluntary removal application which was made prior to the substantive hearing. Ms Anderson submitted that Miss Baxter has not complied with any of the recommendations of the previous panel.

Ms Anderson submitted that, given the lack of information, there remains a risk of repetition as Miss Baxter has not demonstrated any insight or remediated the concerns identified by the previous panel. She submitted that Miss Baxter's fitness to practice remains impaired on both public protection and public interest grounds.

Ms Anderson submitted that, the panel may feel that due to Miss Baxter's failure to address the concerns identified, it is incompatible that she remain on the register and invited the panel to impose a striking-off order.

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 Miss Baxter's fitness to practise remains impaired.

Regarding Miss Baxter's insight, the panel noted that the last panel concluded that Miss Baxter had a lack of real insight into the nature and extent of her failings. This panel has no new information before it to determine whether Miss Baxter's insight has developed in the last 12 months or whether she has taken any steps to remedy her practice.

The last panel determined that Miss Baxter 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 Miss Baxter 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 Miss Baxter's fitness to practise remains impaired.

Determination on sanction

Having found Miss Baxter'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 Miss Baxter'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 Miss Baxter's failings were, in theory, remediable this would require engagement from Miss Baxter. 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 Miss Baxter's non-engagement.

The panel next considered imposing a further suspension order. The panel considered that Miss Baxter has now been under a suspension order for 12 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, other than Miss Baxter's early admissions to the charges, she has not shown remorse for her misconduct and 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. 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 nor is it in Miss Baxter's interest. The panel considered that public confidence in nurses could not be maintained by allowing Miss Baxter to remain on the register. It considered that, in the circumstances, Miss Baxter's failings along with the lack of insight, remorse or remediation at this time are fundamentally incompatible with her remaining on the register. The panel therefore determined that it was necessary to take action to prevent Miss Baxter 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 Miss Baxter'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 26 July 2019.

This decision will be confirmed to Miss Baxter in writing.

That concludes this determination.