

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

5 June 2019

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

Name of registrant:	Mrs Jebbeh Florence Francis
NMC PIN:	01I3625E
Part of the register:	Registered Nurse – Learning Disabilities
Area of Registered Address:	England
Panel Members:	David O'Brien (Chair, lay member) Jennifer Laing (Registrant member) Diane Meikle (Lay member)
Legal Assessor:	Sean Hammond
Panel Secretary:	Leigham Malcolm
Mrs Francis:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by Richard Webb, NMC Case Presenter
Order being reviewed:	Suspension Order – 9 months
Fitness to Practise:	Impaired
Outcome:	Striking-off Order, to come into effect at the end of 18 July 2019 in accordance with Article 30 (1)

Service of notice of hearing

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

The panel was informed that the notice of this hearing was sent to Mrs Francis on 7 May 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Mrs Francis' registered address on 8 May 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 absence

The panel then considered whether or not to proceed in the absence of Mrs Francis. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

Mr Webb, on behalf of the Nursing and Midwifery Council (NMC), drew the panel's attention to a telephone note dated 4 June 2019 which stated that Mrs Francis did not wish to attend or to participate in the hearing via telephone and was 'happy for the hearing to proceed in her absence'.

The panel considered all of the information before it, together with the submissions made by Mr Webb and it has accepted the advice of the legal assessor.

The panel noted the contents of the telephone note and it accepted that Mrs Francis was happy for the hearing to proceed in their absence. It also noted an email from Mrs Francis dated 4 June 2019 which stated:

“...I can't take anymore. Let the panel decides, what they think is right...”

The panel was satisfied that Mrs Francis had been sent notice of today's hearing and that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Mrs Francis' attendance. Having weighed the interests of Mrs Francis with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Francis' 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 18 July 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of an order originally imposed by a panel of the Conduct and Competence Committee on 28 July 2017. The original order, a conditions of practice order, was reviewed at a meeting on 19 July 2018, and replaced with a three month suspension order. The three month suspension order was reviewed on 14 September 2018 and extended for a further nine months. The current order is due to expire at the end of 18 July 2019.

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

The following allegations were found proved by way of admissions at the substantive hearing on 28 July 2018:

That you, a Registered Nurse:

1. On 19 May 2015, while working at Dalewood View Care Home, failed to administer Flucloxacillin at least 30 minutes before food to Patient 38;
2. At or around 22:00 on the night of 11 – 12 January 2016, while working at Darnall Grange:
 - 2.1 Administered 20 mg of Morphine Sulphate to Patient 68 when only 10 mg was prescribed;
 - 2.2 Recorded that you had administered 10 mg Morphine Sulphate to Patient 68 when 20 mg had been administered.

3. On 17 April 2015, while working at Woodlands Care Home, failed to seek emergency assistance when Patient 11 was found unresponsive.

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:

This panel has considered carefully whether Mrs Francis' 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 an email from Mrs Francis to the NMC, dated 20 August 2018 and a letter from Mrs Francis' GP practice, dated 21 August 2018. It has taken account of the submissions made by Ms May.

Ms May provided the panel with a background to Mrs Francis' case. Ms May submitted that there is limited information before the panel as to whether Mrs Francis intends to continue practising as a registered nurse. Further, Ms May stated that there appears to be no evidence of compliance with the recommendation of the last reviewing panel and consequently, there has been no change in the risk level Mrs Francis presents should she return to unrestricted practice. Ms May submitted that, in light of the limited information available today, Mrs Francis' fitness to practise remains impaired. Ms May advised the panel that the full range of sanctions are available to it today. She submitted that removal from the register by way of a striking off order, may be an appropriate consideration at this time.

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 Francis' fitness to practise remains impaired. The panel noted that the last reviewing panel raised concerns about her limited insight. At this hearing, the panel had no evidence before it of any developing insight or remediation demonstrated by Mrs Francis. The panel therefore determined that Mrs Francis remained liable to repeat matters of the kind found at the original hearing. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was 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, in this case, a finding of continuing impairment on public interest grounds is also required.

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

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

Having found Mrs Francis' 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 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 revoke the current order and take no further action but concluded that this would be inappropriate in view of the risk of

repetition identified and the seriousness of the case. The panel then considered whether to impose a caution but decided that this would be neither proportionate nor in the public interest to impose a caution order for the reasons stated above.

The panel next considered replacing the current order with a conditions of practice order. The panel noted that Mrs Francis was previously subject to a conditions of practice order however, no evidence of compliance with this order was provided to the last reviewing panel. In light of this, this panel determined that a conditions of practice order would neither be workable nor sufficiently protect the public at this time.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Francis further time to fully reflect on her previous failings. It considered that Mrs Francis needs to gain a full understanding of how her misconduct impacted the patients she was caring for at the time of the incident and the impact upon the nursing profession as a whole. The panel concluded that a further nine month suspension order would protect the public and would be the appropriate and proportionate response. It would afford Mrs Francis adequate time to further develop her insight and remediation. It would also give Mrs Francis an opportunity to determine whether she intends to return to nursing practice.

The panel next considered a striking off order. It determined that Mrs Francis' misconduct was remediable and a striking off order would be disproportionate and punitive at this stage.

The order will be reviewed prior to its expiry, at which point a reviewing panel will have all sanctions available to them, including a striking off order. Mrs Francis, or her representative, or the NMC, may apply for an early review before its expiry. The panel considered that the next reviewing panel may be assisted by:

- Mrs Francis' attendance at a future review hearing;
- Evidence of learning relating to recognition and treatment of a deteriorating patient;

- A reflective piece evidencing her insight into her failings and the impact her misconduct had on patients, their families, colleagues and the public;
- Any professional or personal references.

Decision on current fitness to practise

The panel has considered carefully whether Mrs Francis' 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 and it has taken account of the submissions made by Mr Webb on behalf of the NMC.

Mr Webb outlined the context to Mrs Francis' case. He informed the panel that there was no new information to undermine the previous panel's finding of impairment. Mr Webb acknowledged that Mrs Francis, in a telephone conversation with the NMC, expressed her intention not to return to nursing. He submitted that Mrs Francis has not addressed the concerns previously identified and therefore a finding of continuing impairment remains necessary on both grounds of public protection and the wider public interest.

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 Francis' fitness to practise remains impaired.

The panel took into account that Mrs Francis had originally been subject to a conditions of practice order, which she made no attempt to comply with. It also took into account that Mrs Francis appears to have made no attempt to remediate her misconduct during her subsequent period of suspension. The panel considered there to be identifiable areas of Mrs Francis' clinical practice which she could have worked to improve through training and professional development. However, the panel had no information before it to suggest that Mrs Francis had taken any steps towards remediating her misconduct and the areas of concern in relation to her nursing practice. The panel also had no information before it to suggest that Mrs Francis had sufficiently developed her insight into her misconduct. In the absence of any information to suggest otherwise, the panel determined that Mrs Francis' fitness to practise remains impaired.

The panel decided that a finding of continuing impairment is necessary on the grounds of public protection. The panel also bore in mind that its primary function was 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, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Francis fitness to practise remains impaired.

Determination on sanction

Having found Mrs Francis' 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 further action but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the charges found proved at the substantive hearing. 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 be inappropriate in view of the risk of repetition identified and seriousness of the charges found proved at the substantive hearing. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel bore in mind that Mrs Francis had previously been subject to a conditions of practice order. It also bore in mind that at that time Mrs Francis made no attempt to comply with the order. The panel acknowledged Mrs Francis statement that she is content working as a carer and her declared intention not to return to nursing. In view of this information, the panel was not satisfied that Mrs Francis would be willing or likely to comply with a conditions of practice order. The panel therefore decided that, in the circumstances, a conditions of practice order would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Ms Francis had taken no steps to address the concerns identified in relation to her clinical practice since the substantive hearing in July 2017. It further noted that Mrs Francis had not demonstrated sufficient insight into her misconduct. The panel was of the view that considerable evidence would be required to show that Mrs Francis no longer posed a risk to the public. Given Mrs Francis' continued failure to address the concerns of previous panels, and her continued failure to remediate her misconduct, the panel decided that a further period of suspension would also serve no useful purpose.

Given that Mrs Francis had expressed that she did not want to return to nursing, the panel was of the view that a striking-off order would be appropriate and proportionate in this case. The panel also considered that a striking-off order would protect the public and serve the public interest.

This decision will be confirmed to Mrs Francis in writing.

That concludes this determination.