

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

**Substantive Order Review Hearing
Friday, 7 June 2019**

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

Name of registrant:	Catherine Elizabeth Spiller
NMC PIN:	10K1159E
Part(s) of the register:	Registered Nurse – Sub-part 1 Adult Nursing – February 2011
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Andrew Harvey (Chair, Lay member) Beth Maryon (Registrant member) Bill Matthews (Lay member)
Legal Assessor:	Jane Rowley
Panel Secretary:	Philip Austin
Registrant:	Not present nor represented in absence
Nursing and Midwifery Council:	Represented by Rachel Culverhouse-Wilson, Case Presenter
Order being reviewed:	Suspension Order (6 months)
Fitness to Practise:	Currently impaired
Outcome:	Striking-off order to come into effect at the end of 14 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 Spiller 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 Spiller on 9 May 2019 by recorded delivery and first class post to her registered address. The Royal Mail Track and Trace did not confirm that notice of this hearing was delivered to Mrs Spiller's registered address, as it stated "Sorry, we tried to deliver your parcel on 10-05-2019 but there didn't seem to be anyone in...". The panel noted that The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) ("the Rules"). simply require the NMC to demonstrate service and not receipt.

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 Rules.

Proceeding in absence

The panel then considered proceeding in the absence of Mrs Spiller. 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 Culverhouse-Wilson, on behalf of the Nursing and Midwifery Council ("NMC"). The panel accepted the advice of the legal assessor.

Ms Culverhouse-Wilson drew the panel's attention to a telephone log between Mrs Spiller and an NMC case officer dated 13 March 2019. In this telephone log, it is recorded "The Registrant said she doesnt wish to respond & she is no longer living at the address we have. The Registrant said she will not disclose any further address as it is private and confidential. she is happy for the NMC to correspond with her in an email"[sic]. She submitted that an NMC case officer attempted to contact Mrs Spiller on

6 June 2019 by email to see if she would be attending today's hearing, however, no response was received.

Ms Culverhouse-Wilson submitted that it is Mrs Spiller's duty to update the NMC register with an up to date address, but she has not provided one. She referred the panel to the case of *General Medical Council v Adeogba [2016] EWCA Civ 162* and submitted that the NMC have taken all steps possible to inform Mrs Spiller of this hearing today.

Mrs Spiller had been sent notice of today's hearing and the panel was satisfied that she was or should be aware of today's hearing. The panel concluded that Mrs Spiller had chosen to voluntarily absent herself, and concluded that she was attempting to disengage with the NMC process. The panel had no reason to believe that an adjournment would result in Mrs Spiller's attendance. Having weighed the interests of Mrs Spiller with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Spiller's 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 14 July 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fourth review of a suspension order, originally imposed by a panel of the Fitness to Practise Committee (“FtPC”) on 14 August 2017 for ten months. This order was then reviewed on 23 May 2018, where a panel of the FtPC imposed a further suspension order for a period of six months. At the last review of this order on 10 January 2019, a panel of the FtPC decided to impose another suspension order for a period of six months. The current order is due to expire at the end of 14 July 2019.

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

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

“That you, a Registered Nurse in or around August 2016 whilst completing an application form for a Staff Nurse role:

1. Failed to declare that you were subject to a Conditions of Practice Order.
2. Failed to declare that you were subject to proceedings by a regulatory body in the United Kingdom.
3. Failed to provide your correct NMC PIN.
4. Failed to declare your reason for leaving ‘Previous employer 1 of 3’, ‘DCHS’.
5. Your actions at Charges 1 and/or 2 and/or 3 and/or 4 above, were dishonest in that you knew you were required to provide the information referred to above and chose not to do so.

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

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

“The panel had careful regard to your reflective statement dated 6 December 2018, together with your oral evidence. The panel noted the concerns highlighted by the previous review panel on 23 May 2018, that: “...you have failed to recognise and accept full responsibility for your actions and therefore there remains serious concerns regarding the risk of repetition. In light of your limited of insight, the panel determined that your misconduct has not been fully remediated and therefore you are still liable to repeat matters of the kind found proved.” The panel considered that you accept that your conduct was dishonest and have reflected further, apologised and expressed remorse for your dishonest conduct. However, the panel was concerned that in the course of your oral evidence you still minimised the seriousness of your actions, asserting that you made an error in not checking the form as opposed to fully accepting the substantive hearing panel’s findings that your dishonesty was deliberate and intentional. In the panel’s view, you have not accepted that your actions were purposefully done in order to gain a potential advantage in obtaining employment. Although you have expressed greater remorse since your order was last reviewed, this panel was not satisfied that you have demonstrated the requisite level of insight into your dishonesty. Therefore, the concerns previously identified in your conduct had not been fully addressed.

In the absence of a satisfactory level of insight which addresses the significant concerns identified, the panel was not reassured that the risk of repetition was sufficiently reduced. The panel therefore determined that your fitness to practise remains impaired. It also concluded that a finding of impairment continued to be necessary on the grounds of both public protection and the wider public interest, in order to uphold proper professional standards and maintain public confidence in the profession and the NMC as its regulator.”

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

“The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would give you a further opportunity to address and remediate the concerns arising from your original substantive hearing.

The panel also bore in mind that it has not been presented with sufficient evidence from you to demonstrate that you have developed the requisite level of insight into your dishonesty. The panel concluded that you would benefit from a further period of time in which to fully reflect and to develop a clear understanding of your actions, the findings of the substantive hearing panel, and demonstrate the necessary insight into your misconduct and dishonesty. The panel therefore concluded that a suspension order for a further period of 6 months would provide sufficient public protection, and maintain confidence in the profession whilst affording you a further opportunity to fully develop your insight and remediation. In all the circumstances, the panel has concluded that a suspension order remains necessary and proportionate.

The panel also considered whether a striking-off order would be proportionate in this case. It took into account that you have shown developing insight and engaged with the regulatory process. The panel concluded that such an order would be disproportionate and unduly punitive at this stage. However, a continued lack of insight and remediation may lead a future panel to come to a different conclusion.

At the next review, the panel may be assisted by the following information:

- Your attendance in person at a review hearing;
- a reflective statement addressing your dishonesty and particularly commenting on the following aspects of the substantive hearing panel’s findings:

“...she was struggling to secure employment as a registered nurse. Accordingly the panel was satisfied that Mrs Spiller was deliberately intending to conceal her COPO so as to secure an interview with the Trust;

The panel found that Mrs Spiller had made a conscious decision not to declare her conditions of practice order on the application form and the panel was satisfied that she must have known such an act was dishonest;

...In failing to declare her reason for leaving her previous employer the panel was satisfied that she was deliberately intending to conceal her practice history to secure an interview with the Trust. She must have known such an act was dishonest.”

- up to date references in relation to any work, whether paid or unpaid, from a manager and or supervisor, attesting to your honesty and integrity. Any reference should confirm that the author is aware of these NMC proceedings and findings.”

Decision on current fitness to practise

The panel has considered carefully whether Mrs Spiller’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 NMC bundle, and the NMC on-table consisting of a Case Examiner investigation report, a letter to Mrs Spiller with the outcome of the new referral made against her, an email to Mrs Spiller regarding her attendance at this hearing, and a telephone log dated 13 March 2019 informing the NMC that she is no longer living at her previous address. It has taken account of the submissions made by Ms Culverhouse-Wilson, on behalf of the NMC.

Ms Culverhouse-Wilson invited the panel to find that Mrs Spiller’s fitness to practise as a registered nurse remains currently impaired on the grounds of public protection and public interest.

Ms Culverhouse-Wilson referred the panel to the telephone log dated 11 January 2019, in which Mrs Spiller makes it clear that she wants the NMC to stop contacting her, and that she has no intention to return to the nursing profession. Ms Culverhouse-Wilson submitted that this is supported by the telephone log dated 13 March 2019, in which Mrs Spiller is recorded as saying that “she has made countless VR [Voluntary Removal] applications”.

Ms Culverhouse-Wilson submitted that in light of Mrs Spiller’s attempts to disengage with the NMC process, she has not developed her insight any further, nor has she taken the opportunity to address and remediate the underlying concerns. Ms Culverhouse-Wilson also submitted that Mrs Spiller has not complied with any of the suggestions made by the previous reviewing panel to provide further information which may assist a future panel. She therefore submitted that a risk of repetition remains in this case.

Ms Culverhouse-Wilson submitted that the panel can take account of any new fitness to practise concerns in relation to Mrs Spiller, in having regard to the wider public interest. However, she submitted that this panel should treat any new information with due care and caution, having the knowledge that a future FtPC panel will need to consider the allegation that Mrs Spiller worked as a registered nurse whilst suspended at a later date. She invited the panel to take account of the allegation, but attach limited weight to it.

Ms Culverhouse-Wilson submitted that a further period of suspension would not achieve anything as Mrs Spiller is no longer engaging with the NMC, has expressed a wish to be removed from the NMC register on multiple occasions, and has made no progress in attempting to return to unrestricted nursing practice.

The panel heard and accepted the advice of the legal assessor which included advice to disregard the information in relation to the more recent referral.

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 Spiller's fitness to practise remains impaired.

The panel had regard to the telephone log dated 11 January 2019, in which Mrs Spiller is recorded as stating that "she had not nursed for over 4 years, was no longer in the profession and had no intention of returning...now all she wanted was to be removed from the register and have us (the NMC) stop writing to her constantly...She said even if she was given her PIN back she would 'not touch it with a barge pole'".

The panel considered Mrs Spiller to have made no further attempt to remediate her conduct, nor develop her insight since the last review hearing. It noted that she has not complied with the recommendations of the previous reviewing panel and that she is attempting to disengage with the NMC process. This was supported by Mrs Spiller's declarations in a telephone log on 13 March 2019 as she makes reference to having made countless voluntary removal applications, although it is not possible for her to embark on this course of action at this stage.

The panel considered Mrs Spiller to have had a significant period of time to reflect on her failings and remediate her conduct, yet she does not appear to have done so.

In light of the above, the panel was of the view that there is a real risk of repetition of a similar set of events occurring in the future. 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 required.

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

Determination on sanction

Having found Mrs Spiller'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 the 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 be inappropriate in view of the risk of repetition identified and the 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 the imposition of a conditions of practice order. The panel noted that there are no identifiable areas of retraining as the concerns identified do not relate to Mrs Spiller's clinical nursing practice. Whilst attitudinal concerns are capable of remediation, the panel determined that it would not be possible to formulate workable conditions to allow Mrs Spiller to return to nursing practice with conditional registration. The panel was also satisfied that a conditions of practice order would not adequately address the public protection concerns and the wider public interest elements of this case.

The panel next considered imposing a further suspension order. The panel noted that Mrs Spiller has been subject to suspension orders since 14 August 2017, and that she has not worked as a registered nurse for over four years. The panel considered Mrs Spiller to have made no progress since the last review hearing, where it was expressed by a FtPC panel that a future reviewing panel would give serious consideration to a striking off order, if Mrs Spiller makes no further attempts to remediate the concerns identified. The panel noted from its decision on impairment, that Mrs Spiller has not remediated the concerns identified, nor has she developed her insight further, or taken

the opportunity to provide any further information which may have been of assistance to the panel. Instead, the panel considered Mrs Spiller to have sought to disengage with the NMC as she does not want to return to nursing, and she has expressed a wish to be removed from the NMC register. In having regard to the above, whilst a further suspension order would satisfy the public protection concerns, the panel was not satisfied that it would sufficiently address the wider public interest elements of this case.

In the circumstances, the panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Spiller from practising as a registered nurse 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.

This decision will be confirmed to Mrs Spiller in writing.

That concludes this determination.