

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

**Substantive Order Review Hearing**

**29 May 2019**

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

<b>Name of registrant:</b>	Miss Catherine Patricia Garner
<b>NMC PIN:</b>	92I0279S
<b>Part(s) of the register:</b>	Registered Nurse – sub part 1 Adult Nursing (4 September 1995)
<b>Area of Registered Address:</b>	Scotland
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Irene Kitson (Chair, Lay member) Paul Hopley (Registrant member) Diane Meikle (Lay member)
<b>Legal Assessor:</b>	Graeme Henderson
<b>Panel Secretary:</b>	Anjeli Shah
<b>Miss Garner:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Alastair Kennedy, Case Presenter
<b>Order being reviewed:</b>	Suspension Order for 6 months
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-off order to come into effect at the end of 12 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 Garner was not in attendance, and she was not represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Garner on 30 April 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Miss Garner's registered address on 4 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 proceeding in the absence of Miss Garner. 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 Mr Kennedy, on behalf of the Nursing and Midwifery Council (“NMC”). The panel accepted the advice of the legal assessor, which included reference to the case of *Adeogba v GMC* [2016] EWCA Civ 162.

Mr Kennedy submitted, on behalf of the NMC, that the discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution, as stated in the case of *R. v Jones (No.2)* [2002] UKHL 5, and confirmed in subsequent cases. He submitted that there had been no request for an adjournment and there was nothing to indicate that an adjournment would secure Miss Garner’s attendance at a hearing on a future date.

Mr Kennedy referred the panel to email correspondence between the NMC and Miss Garner. On 24 May 2019 an email was sent to Miss Garner asking whether she would be attending today’s hearing. Miss Garner responded to that email on 25 May 2019 confirming that she would not be attending the hearing. A further email was sent to Miss Garner by the NMC on 28 May 2019, asking whether she wished to participate in the hearing by telephone or video-link, and whether she wished to submit any documentation to the panel. Miss Garner responded to that email on 28 May 2019 stating:

“I won’t be participating in the meeting as I have given up my registration as I have now taken a different career path working with animals and have no intention of going back to nursing, ever, which I had been wanting to do for years....”

Mr Kennedy submitted that it was clear that Miss Garner had no intention of participating in these proceedings and she had voluntarily absented herself. He submitted that the substantive order to which Miss Garner is subject must be reviewed imminently, before it expires. In these circumstances, Mr Kennedy invited the panel to proceed in the absence of Miss Garner.

The panel had regard to the email correspondence from Miss Garner. It considered that Miss Garner had made it clear that she did not wish to participate in these proceedings. The panel noted that Miss Garner had not requested an adjournment and considered that there was no evidence to suggest an adjournment would secure her attendance at a hearing on a future date. The panel was of the view that Miss Garner had voluntarily absented herself from today's hearing. The panel noted that the substantive order to which Miss Garner is subject is due to expire shortly, and it had also had regard to the public interest in the expeditious disposal of these proceedings. In these circumstances, the panel determined that it would be fair to proceed in the absence of Miss Garner.

## **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 12 July 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the second review of a suspension order, originally imposed by a Fitness to Practise panel on 12 December 2017 for 12 months. That order was reviewed by a panel of the Fitness to Practise Committee on 19 December 2018 and a further suspension order for a period of 6 months was imposed. The current order is due to expire at the end of 12 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, whilst working at Marie Curie Hospice Edinburgh [“the Hospice”]:*

- 1) *On 16 September 2016, took 14 tablets of diazepam 5mg belonging to the Hospice when you did not have authority to do so;*
- 2) *Your actions at paragraph 1 above were dishonest in that you:*
  - a) *Knew that you did not have authority to take medication belonging to the Hospice.*

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

“The panel took account of the fact that Miss Garner has shown limited engagement with the NMC. She was advised that a reviewing panel would be assisted by her attendance, character references and testimonials as to her historic practice and any up to date work, documentary evidence of relevant

nursing training and courses undertaken, a detailed reflective piece and relevant medical evidence

In a phone call dated 23 November 2018, Miss Garner asked the NMC Case Coordinator for instructions on how to submit documentation for this panel's consideration. However, she has failed to do so.

Miss Garner has demonstrated limited insight and remorse. The panel took account of Miss Garner's comments to the investigation officer of "the Hospice" and noted that Miss Garner felt "ashamed" and "embarrassed" and said [PRIVATE]. On 1 November 2016, in a discussion with the NMC case Officer, Miss Garner indicated that she took full responsibility for her actions and understood the severity of the situation. She highlighted that it was an isolated incident in a 25 year career.

The panel has no information as to whether Miss Garner's insight has developed further. She has not provided any medical evidence as to [PRIVATE] or testimonials as to any current employment.

The panel concluded that, due to the lack of any evidence to the contrary, Miss Garner has not remediated her failings or made any attempt to do so.

The panel therefore concluded that Miss Garner's fitness to practise remains impaired 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 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 Garner's fitness to practise remains impaired."

The first reviewing panel went on to determine the following with regard to sanction:

“The panel next went on to consider a suspension order. The panel considered that a further period of suspension would allow Miss Garner further opportunity to reflect on her failings and make a decision with regard to whether she wishes to return to nursing. [PRIVATE] The panel determined that she should be given another chance to re-engage with the NMC and demonstrate that she can return to safe practice.

The panel concluded that a suspension order will adequately protect the public and address the public interest in the case. It considered that a period of six months would allow Miss Garner the appropriate time to demonstrate she now has full insight, has initiated remediation and has re-engaged with the NMC.

The panel went on to consider a striking off order but considered that as the shortcomings in Miss Garner’s practice should be remediable, she should be given a further chance to resume her nursing career. However, Miss Garner should be aware that, even at this stage, the panel gave serious consideration to making a striking off order. Accordingly, she should further be aware that in the absence of any meaningful engagement by her before the next review of this order there is every chance that the next reviewing panel could make the decision to permanently remove her from the NMC register.

In order for Miss Garner to demonstrate progress, any reviewing panel may be assisted by the following:

- Miss Garner’s attendance;
- Character references and testimonials as to Miss Garner’s historic practice and any up to date work;
- Documentary evidence of relevant professional updating and courses undertaken;

- A detailed reflective piece;
- [PRIVATE].

The panel was of the view that it may also be assisted by information relating to Miss Garner's future career intentions."

## **Decision on current fitness to practise**

This panel has considered carefully whether Miss Garner'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 had regard to all of the documentation before it. It took account of the submissions made by Mr Kennedy, on behalf of the NMC.

Mr Kennedy submitted, on behalf of the NMC, that the previous reviewing panel had made recommendations as to what this panel may be assisted by. Miss Garner has indicated that she does not intend to go back to nursing, and that she has pursued a different career path working with animals. Mr Kennedy submitted that Miss Garner had not demonstrated any evidence of insight, remorse and remediation. He submitted that she had been given the opportunity to demonstrate a willingness to improve her practice, and she had not done so. Mr Kennedy therefore invited the panel to find that Miss Garner's fitness to practise is currently impaired. He submitted that sanction was a matter for the panel's judgement.

The panel 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 Garner's fitness to practise remains impaired.

The panel considered that there had been no material change of circumstances since the previous review hearing. Whilst Miss Garner had been given clear recommendations as to what this panel may be assisted by, she had not complied with

those recommendations. Miss Garner had not put forward any information to assist the panel, nor had she demonstrated any evidence of insight, remorse and remediation. The panel noted that Miss Garner had been given two opportunities to put forward such evidence, from the original substantive hearing panel and the first reviewing panel, and she had not provided any information on either occasion.

In these circumstances, the panel considered that there remained a risk of repetition of the original matters found proved. The panel therefore determined that a finding of impairment remained necessary on the grounds of public protection.

The panel bore 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 also determined that a finding of impairment remained necessary on public interest grounds.

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

## **Determination on sanction**

Having found Miss Garner'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 29 of the Order. The panel also took into account the NMC's Sanctions Guidance ("SG") and bore 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 determined that taking no action would not protect the public and it would not satisfy the public interest.

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 the seriousness of the case. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel bore in mind that this sanction was considered inappropriate by previous panels, given the seriousness of the misconduct in this case, which involved dishonesty. The panel also noted that Miss Garner had not been engaging with these proceedings, had not demonstrated any evidence of insight, remorse and remediation and had indicated that she did not intend to return to nursing. Therefore, the panel considered that there was no evidence that she would be willing or able to comply with a conditions of practice order. In these circumstances, the panel determined that it was not possible to formulate practicable and workable conditions of practice which would adequately protect the public and satisfy the public interest.

The panel next considered whether to impose a further period of suspension. The panel noted that Miss Garner had been subject to two periods of suspension by previous panels, where she had been afforded opportunities to demonstrate insight, remorse and remediation and that she is capable of safe and effective practice. During those periods of suspension, Miss Garner had not taken advantage of the opportunities afforded to her. Miss Garner had indicated that she did not wish to return to nursing, and that she

intended to pursue a different career path. In these circumstances, the panel considered that imposing a further period of suspension would serve no useful purpose. The panel considered that a striking-off order was the only sanction which would adequately protect the public and satisfy the public interest, by maintaining public confidence in the nursing profession and the NMC as a regulator. The panel concluded that a striking-off order was the appropriate and proportionate sanction in this case.

This decision will be confirmed to Miss Garner in writing.

That concludes this determination.