

# **Nursing and Midwifery Council**

## **Fitness to Practise Committee**

### **Substantive Order Review Hearing**

28 May 2019

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

<b>Name of registrant:</b>	Miss Boonhiah Jeow
<b>NMC PIN:</b>	01K2040O
<b>Parts of the register:</b>	Registered Nurse – Sub Part One Adult Nursing – 23 November 2001
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Julia Thompson (Chair, lay member) Christine Wint (Registrant member) Darren Shenton (Lay member)
<b>Legal Assessor:</b>	Jeremy Barnett
<b>Panel Secretary:</b>	Leigham Malcolm
<b>Registrant:</b>	Present via telephone, and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Mr Ben Wild, NMC Case Presenter.
<b>Order being reviewed:</b>	Conditions of Practice Order – 12 months
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-Off Order in accordance with Article 30 (2) and (4)

## **Decision and reasons on review of the current order**

The panel decided to impose a Striking-Off order. This order will come into effect immediately in accordance with Article 30 (2) and (4) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the sixth review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 14 March 2013 for 12 months. The current order is due to expire at the end of 13 June 2019.

The panel is reviewing the order pursuant to Article 30 (1) and (2) of the Order. The NMC received a message from you at 9.30 am on 28 May 2019, the morning of the hearing, stating that you have not been feeling well and wondering what to do. Although you had been asked by email on the 24 May 2019 whether or not you were planning to attend the hearing and had not responded, the panel decided that it would be fair to you to allow you to join the hearing later that morning by telephone.

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

That you, whilst working as a Registered Nurse at Argyles Nursing Homes, Pound Street, Newbury, Berkshire:

1. On or about 18 November 2010;
  - a. administered a controlled drug without a witness present;
  - b. administered a controlled drug without first having the dosage checked;
  - c. administered an Oxynorm 5mg Capsule to Resident A, who had in fact been prescribed the Oxynorm in a liquid form;
  - d. failed to discard pre-potted medication, instead leaving it in the medication trolley;

- e. failed to sign MAR sheets during your medication round and instead attempted to sign them at the end of your shift.
2. On or about 07 February 2012;
- a. stored pre-potted medication in the pockets of your uniform;
  - b. offered Resident B the incorrect medication.

AND for the reasons set out above, your fitness to practise is impaired by reason of your misconduct

**The fifth reviewing panel determined the following with regard to impairment:**

The panel at this hearing has considered carefully whether Miss Jeow'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 judgement as to current impairment.

The panel has had regard to all of the documentation before it today, including email correspondence between Miss Jeow and the NMC from August 2018, and a telephone note from a call between Miss Jeow and the NMC on 28 August 2018.

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 Jeow's fitness to practise remains impaired. The panel noted that Miss Jeow did wish to attend today's hearing but was unable to. The panel today has no new information before it to indicate whether Miss Jeow has engaged with her current conditions of practice order, and no new information to demonstrate any evidence of remorse, insight, or remediation.

In the light of the lack of any new information, the panel concluded that nothing had been submitted to it to suggest that there is no longer a risk to the public. It determined that Miss Jeow's fitness to practise remains impaired on the grounds of public protection and in the wider public interest so as to uphold proper standards of conduct and maintain public confidence in the nursing profession.

**The fifth reviewing panel determined the following with regard to sanction:**

Having found Miss Jeow's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel has taken into account the NMC's Sanctions Guidance 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. To take no further action would place no restrictions on Miss Jeow's practice and so would not protect the public or meet the wider public interest.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk identified. Imposing a caution order would not place any restrictions on Miss Jeow's practice and so would not sufficiently protect the public or meet the wider public interest.

The panel next considered whether to continue the current conditions of practice order. The panel took into account Miss Jeow's email dated 28 August 2018 in which she stated that she wished to attend her review hearing but was unable to,

and that she hoped the panel would postpone today's hearing. The panel also took into account the NMC telephone note dated 28 August which stated that Miss Jeow was advised that "the panel would take her circumstances into account and would likely extend the order."

The panel therefore considered that extending the current conditions of practice would be proportionate and appropriate to afford Miss Jeow the opportunity to present her case before a future reviewing panel. It therefore determined that a conditions of practice order for a period of 9 months would be appropriate. This would allow her time to access a return to practise course she is now required given the length of time she has not practised as a nurse. This panel noted that the substantive order was made in March 2013, over 5 years ago. While this panel cannot bind future panels, it is now a material consideration that, where the same sanction is repeatedly rolled over for a period of 5 years without any apparent remediation, this undermines public confidence in the NMC as a regulator. This panel therefore strongly encourages Miss Jeow to attend any future review with evidence of her remediation, and compliance with the current conditions of practice order.

The panel considered that it would be disproportionate to impose a suspension order at this hearing when Miss Jeow has been told that a conditions of practice order was likely to be continued.

The panel was of the view that the existing conditions of practice would be appropriate, proportionate and would provide sufficient public protection:

1. Until a registered nurse has deemed you competent to administer prescribed medication alone, you must only do so under the direct supervision of another registered nurse. Direct supervision includes supervising you making the usual formal records of any such administration.
  
2. When working as a registered nurse, 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 medication administration and management.

3. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which it is formulated.
4. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every 4 to 6 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
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 every 6 months and 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 notify the NMC within 14 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.
8. You must inform the NMC of any criminal or professional investigation started against you and any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.

9. You must immediately inform the following parties 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 (8) above, to them:

Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work

Any agency you are registered with or apply to be registered with (at the time of application)

Any prospective employer (at the time of application)

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)

The reviewing panel may be assisted by:

- Miss Jeow's engagement with NMC proceedings and clear evidence of a pro-active approach to her return to nursing
- Miss Jeow's attendance at a future review hearing
- Any references or testimonials

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

The panel has considered carefully whether your 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 took account of the submissions of Mr Wild on behalf of the NMC, and from you.

Mr Wild briefly outlined the background to your case. He informed the panel that on a review, there is a persuasive burden on registrants to produce evidence of steps that have been taken to demonstrate that all of the misconduct has been remediated and that you have developed insight into your failings.

Mr Wild submitted that the current conditions are not so onerous as to be a barrier to you gaining employment and completing a return to practice course. He invited the panel to consider what use a further conditions of practice order might be. He submitted that, given the background in this case, the panel should give strong consideration to imposing a striking-off order.

You gave evidence under affirmation and told the panel that nursing is your greatest passion and that you want to return to the profession. You told the panel that you have made attempts to gain entry to a return to practice nursing course. However, when pressed you were unable to provide any convincing evidence of these attempts, and conceded that one of the attempts was a tentative telephone call to a University on the morning of this hearing.

You also told the panel that you considered undertaking an administration of medication course online, which cost somewhere in the region of £200, but had not actually done so or made any arrangements to do so.

You told the panel that you currently work as a Play Leader at the Royal Berkshire Hospital in the A&E department. Your duties include assisting doctors and nurses in carrying out care through play therapy and distraction techniques for children.

In response to questions you stated that in the past nine months you have undertaken the following mandatory courses relating to your current role as a Play Leader:

- Level three Safeguarding
- General awareness
- Prevent training
- Electrocardiography training

You conceded that none of the training undertaken dealt with medication administration or record keeping which were central to the initial findings of misconduct.

On 6 July 2019 you will complete a resuscitation and basic life support training course.

You initially told the panel that over the past nine months you have contacted Oxford Brooks University, among others, in attempts to secure a place on a return to practice course. You are hopeful that you will be able to enrol on a course in September of this year. However, on further questioning you conceded you have not made any applications for either a return to practice course or nursing positions over the past nine months.

Mr Wild, in his closing submissions, stated the burden is upon you to evidence that you have taken a pro-active approach to return to the nursing profession. He reminded the panel of its right to strike you off of the NMC register.

The panel heard and accepted the advice of the legal assessor.

The panel considered whether your fitness to practise remains impaired. 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 recognised the difficulties in giving evidence over the telephone. The panel considered that you were unable to provide evidence of any attempts to remediate the concerns identified. The panel identified conflicting statements within your evidence and it formed the view that some of your statements were vague. It considered your evidence to be scant and at times lack credibility.

The panel was of the view that, whilst you had completed mandatory training for your current role, you had made no attempts to develop your nursing knowledge. The panel was of the view that the basic training that you have completed does not relate to

medications administration nor go any way to addressing the misconduct identified. It bore in mind that you have not been working as a registered nurse and that you have been unable to comply with the conditions of practice order previously imposed.

The panel considered that you failed to take responsibility for your own return to safe and effective nursing practise. It determined that there was no evidence before it that you had made any attempts to remediate your misconduct.

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 was necessary on the grounds of public protection and also the wider public interest.

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

### **Determination on sanction**

Having found your 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 issues identified. 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 the issues identified. The panel again decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered continuing the current conditions of practice order and was of the view that your ongoing failure to comply with the current order may be indicative of an

attitudinal problem. In light of your failure to comply with the conditions of practice order that has been in place over the past five years, the panel determined that you are unlikely to comply with any conditions of practice order in the future. The panel had no confidence that you would be pro-active, take accountability for your misconduct and take responsibility for your return to nursing. It therefore determined that any continuation of a conditions of practice order would not be appropriate.

The panel next considered imposing a suspension order. The panel's main concern was that you have been subject to restriction on your practice for a period of five years and have not used this time proactively. The panel considered that it was clear from your evidence that you have failed to take advantage of the opportunity to rebuild your practice that was offered to you by the original panel in 2013 and subsequent reviewing panels. The panel concluded that you have not responded positively and were either unwilling or unable to take appropriate steps to remediate your misconduct. In these circumstances the panel determined that a period of suspension would not serve any useful purpose.

The panel determined that a striking-off order was the only proportionate and appropriate sanction in this case. It considered that your repeated failure to address the restrictions placed on your registration for a period of over five years raised fundamental questions about your professionalism. It determined that public confidence in nurses and midwives could not be maintained if you were not removed from the register. The striking-off order was the only sanction which would sufficiently protect patients, members of the public and maintain standards within the profession. The panel therefore directs the registrar to strike your name off the register.

This decision will be confirmed to you in writing.

That concludes this determination.