

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
23 May 2019

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

Name of registrant: Caroyln Ann Marshall

NMC PIN: 7610170E

Part(s) of the register: RN1, Registered Nurse (sub part 1) - Adult (29 November 1979)
RM, Registered Midwife- Midwifery (15 February 1982) RHV,
Health Visitor – Specialist Community Public Health Nurse (8 October 1988)
V100, Community Practitioner Nurse Prescriber (23 August 2000)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Janet Kelly (Chair, registrant member)
Elaine Hurry (Registrant member)
Tom Ayers (Lay member)

Legal Assessor: Richard Tyson

Panel Secretary: Aoife Kennedy

Nursing and Midwifery Council: Represented by Richard Webb

Order being reviewed: Suspension Order (3 months)

Outcome: Striking off order to come into effect at the end of 21 June 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Marshall 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 Marshall on 23 April 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered and signed for on 24 April 2019, alongside the printed name of 'MARSHALL'.

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 Mrs Marshall. 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 Webb, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Webb referred the panel to a telephone note detailing a conversation between an NMC case officer and Mrs Marshall, dated 22 May 2019, within which Mrs Marshall stated that she had read the case officer's email dated 21 May 2019 which referred to today's hearing, and that she no longer wanted to be a nurse. Mr Webb submitted that, although Mrs Marshall did not explicitly confirm that she would not be attending today's hearing, notice of today's hearing has been served on Mrs Marshall and she

should therefore be aware of today's hearing. Mr Webb submitted that Mrs Marshall has therefore voluntarily absented herself from these proceedings and invited the panel to proceed in her absence.

Mrs Marshall had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing and that she had chosen voluntarily to absent herself. In light of the telephone conversation referred to above, the panel had no reason to believe that an adjournment would result in Mrs Marshall's attendance. Having weighed the interests of Mrs Marshall with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Marshall's absence.

Decision and reasons on application under Rule 19

Mr Webb made a request that parts of Mrs Marshall's hearing be held in private on the basis that proper exploration of her case involves reference to her health. The application was made pursuant to Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel considered that it would be possible to move between public and private consideration of Mrs Marshall's case. It therefore determined to hold parts of the hearing relating to Mrs Marshall's health in private.

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 21 June 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fifth review of an order originally imposed by a Conduct and Competence Committee on 17 March 2016 and most recently reviewed on 22 March 2018. The current order is due to expire on 21 June 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, whilst employed by Morton House Nursing and Residential Home:

1. *On the night shift of the 3/4 January 2014:*
 - a. **[PRIVATE];**
 - b. *Slept whilst on duty;*
 - c. **[PRIVATE];**
 - d. **[PRIVATE].**

AND in light of the above your fitness to practise is impaired by reason of your misconduct.

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

“The panel considered the fact that it had no new information before it from Mrs Marshall, despite the recommendations made by the last reviewing panel. The panel had no evidence as to Mrs Marshall’s current state of health or whether she is taking steps to address her health concerns.

The panel had sympathy with Mrs Marshall's situation. **[PRIVATE]**.

Unfortunately, in the absence of any new evidence, the panel could not assess or understand Mrs Marshall's current state of health, insight into and ability to manage her health issues, **[PRIVATE]**. In all the circumstances, the panel decided that a finding of continuing impairment is necessary on the grounds of public protection.

Further, 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 Marshall's fitness to practise remains impaired.”

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

“The panel considered replacing the suspension order with a conditions of practice order. However, in light of Mrs Marshall's indication that she no longer wishes to engage with the NMC's proceedings and in the absence of any up to date information as to her health, the panel determined that a conditions of practice order would not be a workable, proportionate nor appropriate response as it would not sufficiently protect the public.

The panel considered the imposition of a further period of suspension. It was of the view that a further suspension order would allow Mrs Marshall further time to determine whether she wishes to fully re-engage with the NMC's proceedings. It considered that a further three month suspension order would be the appropriate and proportionate response and would afford Mrs Marshall adequate time to reflect on her long term decisions and allow her an opportunity to produce the items suggested by the previous reviewing panel, specifically:

- Up to date references and testimonials from employers (both voluntary and paid);
- **[PRIVATE]**
- **[PRIVATE]**
- **[PRIVATE]**

Further, a future reviewing panel would be assisted by:

- Mrs Marshall's attendance at a future review hearing;
- Continued engagement with the NMC **[PRIVATE]**.

The panel did consider whether to impose a striking off order in light of Mrs Marshall's expressed intention to disengage from this process. However, it considered that this would be a disproportionate response at this time.

[PRIVATE]. Even for this hearing, she had spoken to the NMC to advise them of her current position. The panel considered that Mrs Marshall may not fully appreciate that, if she ceases to engage with her regulator and provide information to assist the panel in understanding her current situation, a time may come when the situation is incompatible with ongoing registration and a striking off order becomes the only appropriate and proportionate sanction.

The panel considered that she should be afforded a further opportunity to reflect on her long term decisions and plans in relation to her nursing career, and to consider whether she wishes to re-engage with the process and provide up to date evidence. She needs to be aware of the potential risks and consequences of not doing so. The panel therefore considered that, at this stage, a striking off order was disproportionate and the appropriate response was a suspension order.”

Decision on current fitness to practise

The panel has considered carefully whether Mrs Marshall'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 the light of the current circumstances. It has noted the decision of the previous panels. However, it has exercised its own judgment as to current impairment.

The panel heard the submissions of Mr Webb, on behalf of the NMC, who explained the background to the case and guided the panel to the relevant elements of the previous panel's decision.

The panel has had regard to all of the documentation before it, including two notes from telephone calls between Mrs Marshall and the NMC dated 18 April 2019 and 22 May 2019. It has taken account of the submissions made by Mr Webb and 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 the need to declare and uphold proper standards of conduct and behaviour.

The panel considered whether Mrs Marshall's fitness to practise remains currently impaired. It took into account the two telephone notes dated 18 April and 22 May 2019 in which Mrs Marshall said that she no longer wished to practice as a nurse and wished to be removed from the Register. The panel received no further information from Mrs Marshall in relation to her insight and remediation. Mrs Marshall had not provided any information as to what she has been doing since the previous review hearing. In light of this lack of information, and Mrs Marshall's clear indication that she no longer wishes to practice as a nurse, the panel determined that there remains a risk of harm to the public if Mrs Marshall was permitted to practise as a

nurse without restriction, and concluded that her fitness to practise remains impaired on the grounds of public protection.

The panel had regard to the wider public interest which includes declaring and upholding proper professional standards and maintaining public confidence in the regulatory process. The panel considered that public confidence in the profession and the regulatory process would be undermined if there were no finding of impairment. The panel therefore concluded that a finding of current impairment also remained necessary on wider public interest grounds.

Determination on sanction

Having found Mrs Marshall'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 in relation to sanction are set out in Article 30 of the Order. The panel also had regard to the NMC's Sanctions Guidance. It 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 considered that it would be neither appropriate nor proportionate to take no further action and allow the current order to lapse, or to impose a caution order in light of the risk of repetition identified.

For the same reasons as those identified by the previous reviewing panel, this panel considered that it was not possible at this time to formulate workable conditions of practice which would be sufficient to protect the public from the risk of harm. The panel has not received any evidence which would enable it to conclude that Mrs Marshall would be willing to engage with conditions of practice. The panel concluded that a conditions of practice order is not appropriate or workable in this case.

The panel then considered whether a further suspension order would be appropriate and proportionate. It took into account the previous reviewing panel's reasons that a

suspension order would allow Mrs Marshall further time to determine whether she wishes to fully re-engage with the NMC's proceedings. This panel has seen no evidence from Mrs Marshall of any intention to return to practice as a nurse, and she has clearly stated to the NMC that she wishes to be removed from the register. This panel therefore was not satisfied that Mrs Marshall would make use of a further period of suspension to re-engage. For these reasons, the panel considered that a further suspension order would not be appropriate.

The panel then considered whether strike-off was appropriate and proportionate in the circumstances. It noted that the previous reviewing panel stated in its determination, which would have been sent to Mrs Marshall, that a strike-off would be available to any future reviewing panel. This panel considered that, given Mrs Marshall's persistent failure to demonstrate a commitment to and engage with the process of remedying the failings identified in her practice, it regretfully concluded that striking off Mrs Marshall's name from the register was the only appropriate and proportionate option available to the panel. This result accords with Mrs Marshall's own express views to the NMC.

The striking-off Order will take effect from the expiry of the current order at the end of 21 June 2019 in accordance with Article 30(1) of the Order.

This decision will be confirmed to Mrs Marshall in writing.

That concludes this determination.