

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
1 November 2019**

Nursing and Midwifery Council, Temple Court 13a Cathedral Road, Cardiff, CF11 9HA

Name of registrant:	Kerry Louise Sankey
NMC PIN:	08A0051E
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – September 2008
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Catrin Davies (Chair, Lay member) Yvonne O'Connor (Registrant member) Sue Heads (Lay member)
Legal Assessor:	Christopher McKay
Panel Secretary:	Caroline Pringle
Miss Sankey:	Not present and not represented in her absence
Nursing and Midwifery Council:	Represented by Zainab Mohamed, NMC Case Presenter
Order being reviewed:	Conditions of practice order (2 years)
Fitness to Practise:	Impaired
Outcome:	Conditions of practice order to lapse upon expiry in accordance with Article 30(1), namely at the end of 5 December 2019

Service of notice of hearing

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

The panel was informed that the notice of this hearing was sent to Miss Sankey on 27 September 2019 by recorded delivery and first class post to her registered address. It was also sent to Miss Sankey's representative at the Royal College of Nursing (RCN) on 27 September 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 Sankey. 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 Mohamed, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Mohamed referred the panel to an email from Miss Sankey's RCN representative, dated 1 October 2019, which confirmed that Miss Sankey would not be attending today's hearing but that written submissions would be provided on her behalf. These submissions were subsequently received on 29 October 2019. She submitted that there has been no request for an adjournment, nor was there anything to suggest that an adjournment would serve any useful purpose. In these circumstances, Ms Mohamed invited the panel to proceed in the absence of Miss Sankey.

In light of this correspondence, the panel was satisfied that Miss Sankey is aware of this hearing and, having had the benefit of legal advice, she has voluntarily absented herself. It noted that the RCN has provided written submissions for the panel's consideration, in the apparent expectation that the hearing will proceed in Miss Sankey's absence. There has also been no request for an adjournment and the panel had nothing to suggest that an adjournment would serve any useful purpose. In these circumstances, the panel was satisfied that it was in the public interest, as well as the interests of the NMC and Miss Sankey, to proceed in her absence today.

Decision and reasons on review of the current order

The panel decided to make a finding of current impairment but to take no further action on sanction and allow the current order to lapse upon expiry at the end of 5 December 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a conditions of practice order imposed by a Fitness to Practise panel on 3 November 2017 for two years. The current order is due to expire at the end of 5 December 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 employed at Princess Royal Hospital - The Shrewsbury and Telford Hospital NHS Trust:

1. ...
2. *On 29 June 2012, did not administer and / or sign for the administration of Intravenous Hydrocortisone in relation to Patient A*

3. *On 30 June 2012, did not administer and / or sign for the administration of Intravenous Hydrocortisone in relation to Patient A*
4. *On 16 July 2012, signed for the administration of Zomorph to Patient B when you had in fact not administered it to Patient B*
5. *On 23 July 2012, did not delegate observations appropriately to Colleague A in that you did not ask for regular updates and / or check whether the observations were satisfactory;*
6. *On 23 July 2012, did not ask whether patients were content and / or whether any concerns were identified when you delegated the completion of a comfort chart to Colleague A;*
7. *On 23 July 2012, did not provide adequate delegation / direction during the course of the shift to Colleague A;*
8. *On 23 July 2012, did not observe patients in enough detail when completing comfort charts;*
9. *On 23 July 2012, needed to be prompted to decontaminate your hands when administering eye drops to an unknown patient*
10. *On 13 September 2012 in relation to Patient C:*
 - a. *signed to indicate that you had administered Rifaximin when you had in fact administered Fluconazole to Patient C*
 - b. *Did not administer the prescribed dose of Rifaximin to Patient C*
11. *On 19 September 2012, incorrectly assessed and/or recorded Patient D's skin as being healthy and intact when in fact she had a grade 2 pressure area on her sacrum*

12. *On 20 November 2012, did not ask and / or clarify whether an unknown patient had any allergies when administering their medication*

13. *On 20 November 2012, did not cross reference an unknown patient's wristband with both of their prescription charts*

14. ...

15. *During a shift commencing 8 April 2015 in relation to Patient E:*

a. *Did not adequately carry out observations on Patient E*

b. ...

c. *Did not administer and/or sign for the administration of Intravenous (IV) fluids to Patient E*

16. *On or around 19 April 2015 in relation to Patient F:*

a. *set up patient F's furosemide infusion at the incorrect rate;*

b. *Incorrectly labelled an insertion line rather than labelling a syringe;*

17. *On or around 19 April 2015 you signed to indicate that you had administered 80mg of furosemide to Patient J when you had not administered the full dose*

18. ...

19. *In July 2015 did not provide an appropriate level of assistance to an unknown patient in that you did not make any attempt to assist the patient back to the bedside and / or help the Healthcare Assistant to clean up the patient*

20. ...

21. *During a night shift commencing 9 July 2015, did not adequately monitor Patient G's blood sugar levels*

22. ...

23. During a night shift commencing 10 October 2015, signed for but did not administer Vitamin B12 to Patient H.

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

The substantive panel determined the following with regard to impairment:

The panel divided the misconduct it has found into two separate categories; namely, the mistakes you made in 2012 and the shortcomings in your practice which occurred in 2015.

The panel accepted that in 2012 you acknowledged the mistakes you had made in your practice and took effective steps to address them by completing a PIP and undergoing training and supervision. The panel accepts that you successfully addressed the deficiencies in your practice in 2012.

You had taken successful remedial steps in 2012 and therefore were aware of the required standard of practice and how to achieve it. The panel noted the content of your 2012 reflective pieces, many of which contain a sentence to the effect that you have learned from your error and that you will not make the same mistake again. Despite suggesting that you have learned from your mistakes, similar shortcomings did reoccur in 2015.

In considering whether your fitness to practise is currently impaired, the panel considered your remorse for, and insight into, your misconduct.

In respect of remorse, the panel had regard to your reflective statement in which you stated "I do apologise for all my errors and mistakes". Some

of your previous reflective pieces also contain an apology to the patient involved.

However, the panel is of the view that your insight into your misconduct is limited. In your reflective statement submitted to this panel you acknowledge and apologise for your errors but you display no understanding of the potential impact they could have had. You do not demonstrate in this document that you understand the specific risks that your acts or omissions could have had; for example, the potential risks to patients if they do not receive medication or if they do not have observations taken. Your reflective piece is lacking any detailed reflection on the impact your actions could have had on patients, their relatives, your colleagues and the reputation of the nursing profession.

Your past reflective statements, written for the Trust, contain limited insight. The reflective piece you composed following the incident detailed in charge 17 is a more comprehensive piece than the others and contains a section in which you evaluated your practice and set out what you would do differently next time. This reflective piece contains the only robust example of insight that the panel has before it.

The most important element of insight in this case, which the panel considered to be absent from your reflective statement, is an understanding of why your shortcomings in 2015 occurred when you had already remediated similar shortcomings back in 2012. The panel considered that your insight would be strengthened had you reflected on what went wrong which caused a recurrence of similar mistakes in 2015 and what you have learned from this to prevent such a relapse from happening again.

In terms of remediation, the panel noted that all of your misconduct is remediable. It relates to your clinical practice and is capable of remedy with support, training and development. As noted above, you have

already demonstrated you can remedy your shortcomings. Your mistakes in 2012 were remediated and, until 2015, you showed yourself capable of safe and effective practice. However, as has been accepted by you already, you have not remedied your more recent shortcomings. You were dismissed from the Trust in 2015, before you had fully remediated your practice, and have not worked in a healthcare setting since.

Given the absence of remediation and your underdeveloped insight, the panel determined that there is a risk of you repeating your misconduct. As such, the panel is of the view that you are liable to place patients at unwarranted risk of harm in future should you be permitted to practise unrestricted. The panel therefore found that your fitness to practise is impaired on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. There is a public interest in restricting the practising rights of an unsafe nurse. The panel therefore found that your fitness to practise is also impaired on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

The substantive panel determined the following with regard to sanction:

The panel first considered whether to take no action but concluded that this would be inappropriate. To take no further action would not place restrictions on your practice and so would not protect the public.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the NMC's Sanctions Guidance, which states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate. To impose a caution order would place no restriction on your practice and so would not protect the public.

The panel next considered imposing a conditions of practice order. The panel noted that all of the misconduct in this case is remediable and there are identifiable areas of your practice which would benefit from re-training. There are no harmful personality or deep-seated attitudinal issues in this case and there is no evidence of general incompetence, as you have in the past shown that you are capable of safe practice. The panel has heard that you are willing to respond to re-training.

The panel has evidence that you successfully addressed your shortcomings in 2012, which indicates that you are able to practise to the requisite standard with a period of support, supervision, training and development. The panel does have a reservation about your level of insight into why there were reoccurring deficiencies in your practice in 2015 but it applied the principle of proportionality and balanced this against your interests. The panel concluded that there are conditions of practice that could be formulated to address the risks in your practice that would sufficiently protect the public whilst allowing you the opportunity to remediate your practice and develop your insight.

The panel did consider imposing a suspension order but was of the view that this would be disproportionate given that it has identified that your misconduct is remediable. You are keen to return to nursing practice and have indicated that you would comply with conditions of practice. A

suspension order would render you unable to remediate the shortcomings in your practice and would prevent you from being able to return to safe practice. The panel considered that there is a public interest in returning otherwise capable nurses to practice with the appropriate safeguards in place.

The panel is of the view that a period of two years is the appropriate length of this order. You have previously demonstrated that you are capable of reaching the requisite standard of practice. The panel determined that this order should be for a two year period in order for you to be able to demonstrate a sustained improvement in your practice.

Decision on current fitness to practise

The panel considered carefully whether Miss Sankey's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel. However, it exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it, including the decision of the substantive panel and the written submissions provided by the RCN on behalf of Miss Sankey, dated 29 October 2019. It also took account of the submissions made by Ms Mohamed on behalf of the NMC.

Ms Mohamed outlined the background of the case. She submitted that, as Miss Sankey has not worked as a nurse since November 2015, she has not been able to remediate the deficiencies in her practice. Ms Mohamed also submitted that the panel has no evidence of any further insight from Miss Sankey. In these circumstances, Ms Mohamed submitted that Miss Sankey's fitness to practise remains impaired. She submitted that sanction was entirely a matter for the panel's independent judgement but recognised

the RCN's submissions and referred the panel to the NMC guidance on allowing orders to expire when a nurse or midwife's registration will lapse.

The panel also had regard to the RCN's written submissions. These submissions accepted that Miss Sankey's fitness to practise remains impaired but invited the panel to allow the conditions of practice order to lapse. This would have the practical effect of removing Miss Sankey from the NMC register as she has not practised as a nurse since 2015 and her PIN is being kept artificially active by reason of these Fitness to Practise proceedings.

The submissions were accompanied by a statement from Miss Sankey, dated 3 October 2019, in which she sets out the various health issues which have prevented her from nursing, and a signed declaration, dated 19 September 2019, which confirms that:

- i. Miss Sankey accepts that her fitness to practise is currently impaired;
- ii. She does not want or intend to continue practising; and
- iii. She understands that if she were to apply for readmission to the Register, she would be required to demonstrate that she is capable of safe and effective practice and the steps that she has taken to improve her practice and reduce any risks to patients.

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 Sankey's fitness to practise remains impaired. It noted that Miss Sankey has not worked as a registered nurse since the substantive hearing and therefore she has not been able to remediate her misconduct. It noted that the substantive panel was of the view that Miss Sankey had demonstrated limited insight into her misconduct. This panel had no evidence that Miss Sankey's insight has developed any further since then.

The panel considered that there had been no material change since the substantive hearing and decided that a finding of current impairment continued to be justified on the grounds of public protection given that Miss Sankey has provided no evidence of remediation or insight.

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 also continued to be justified.

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

Determination on sanction

Having found Miss Sankey'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 also took into account the NMC's Sanctions Guidance, the case of *Clarke v General Optical Council* [2018] EWCA Civ 1463, and the NMC's SOR Guidance, in particular the sections regarding allowing an order to expire when a nurse's registration will lapse.

The panel had regard to the RCN's submissions. It noted that Miss Sankey's registration would have lapsed but for these Fitness to Practise proceedings. Miss Sankey has not worked as a registered nurse since November 2015 and has not paid her registration fees. Over the past two years she has suffered from a number of serious health problems which have prevented her from working as a registered nurse. She remains under the care of two consultants and in her written statement, dated 31 October 2019, states that she has "*come to the realisation I will not be returning to nursing again*". She has also signed a declaration, dated 19 September 2019, stating that she does not intend to continue to practise.

The panel was satisfied, from the evidence before it, that Miss Sankey is currently unable to work as a nurse and is highly unlikely to seek to return to the profession in the future.

The panel bore in mind that its primary purpose was the protection of the public. If it were to revoke the current suspension order or allow it to lapse, then Miss Sankey's nursing registration will also lapse and she would be unable to practise as a registered nurse. The public would therefore be adequately protected. Further, if she were to attempt to renew her registration and seek to gain readmission to the register, then she would need to demonstrate to the Registrar that she was fit to be admitted to the register, which would include being of good character and health. The Registrar would also have available all of the information regarding these proceedings, including this panel's finding of current impairment. In addition there would be considerations relating to the completion of a Return to Practice course and revalidation, given the length of time that Miss Sankey has been out of practice.

The panel also acknowledged its obligation to consider the full range of sanctions. It determined that a caution order would be insufficient to protect the public and that workable conditions could not be formulated given Miss Sankey's current health issues. In light of Miss Sankey's clear intention to leave the profession, the panel could not see that any useful purpose would be served by a suspension order. It acknowledged that a striking-off order would achieve the same practical outcome as taking no further action. However, the panel had regard to the RCN submissions that nothing has occurred since the substantive order was imposed which could be said to demand a higher sanction or that is fundamentally incompatible with ongoing registration. The NMC made no submission to the effect that there were grounds for striking-off or that a sanction at that level would be justified in Miss Sankey's case. The panel concluded that a striking-off order would be disproportionate and unduly harsh when the same level of public protection could be properly and pragmatically achieved by other means.

The panel also had regard to the public interest in this case and concluded that a member of the public, in full possession of the facts of this case, would not think it appropriate or proportionate to impose a more restrictive sanction and prolong these

proceedings in circumstances where a nurse is unable to remediate her misconduct due to her health and when public protection can be achieved by other means.

The panel therefore determined that the appropriate and proportionate decision in this case, which balanced Miss Sankey's interests and satisfied the NMC's statutory duty to protect the public and uphold public confidence in the profession and the regulator, was to take no further action and allow the current conditions of practice order to expire at the end of 5 December 2019 in accordance with Article 30(1). This will bring these proceedings to an end.

This decision will be confirmed to Miss Sankey in writing.

That concludes this determination.