

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

Substantive Order Review Meeting

22 October 2019

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

Name of registrant: Paul Anthony Conley

NMC PIN: 98J0447E

Part(s) of the register: Registered Nurse- Sub Part 1
Mental Health Nursing – October 2001

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Julie Tindale (Chair, Registrant member)
Susan Greenwood (Registrant member)
Gill Madden (Lay member)

Legal Assessor: Nigel Mitchell

Panel Secretary: Edmund Wylde

Order being reviewed: Suspension Order (12 months)

Fitness to Practise: Impaired

Outcome: Striking-Off Order to come into effect
immediately in accordance with Article 30 (2)

Decision on Service of Notice of Meeting:

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended* state:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The letter of notice of this substantive order review meeting was sent to Mr Conley's address on the register on 18 September 2019. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that there has been no response from Mr Conley in relation to the notice of this meeting.

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) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a suspension order, originally imposed by a Fitness to Practise on 8 November 2018 for 12 months. The current order is due to expire at the end of 7 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 working at South Staffordshire & Shropshire Healthcare NHS Foundation Trust:

- 1. During the night shift of 6/7 August 2016, you recorded that Patient A had “slept well” when Patient A was not present in his bed.*
- 2. Your actions at charge 1 above were dishonest as you were aware that Patient A was not present in his bed.*
- 3. During the night shift of 22/23 February 2017, in relation to Patient B, you*
 - a. Used an inappropriate handling technique;*
 - b. ...*
 - c. ...*

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

The original panel determined the following with regard to impairment:

The panel finds that all four limbs of the test in Grant above are engaged in this case.

In respect of the first limb of the Grant test, the panel considered first that Mr Conley’s actions had put patients at an unwarranted risk of harm. It acknowledged that it had no evidence before it from Mr Conley as to his insight into his actions, any potential remorse or recognition of the impact his actions may have had on patients, or attempts at remediation. The panel considered that

all of the statements made by Mr Conley in the local investigation of these events were exculpatory in nature, often attributing blame to other members of staff; with regard to Charge 3 specifically, Mr Conley essentially denies that his actions took place and provides a completely different version of events. The panel also noted that Mr Conley, in his local statement, did not recognise that Patient B fell on another member of staff during the act of expelling Patient B from the room, as witnessed by Ms 6. In light of all these factors, the panel considered that a risk of repetition of Mr Conley's misconduct exists.

Turning to the second limb of the test in Grant, the panel determined that Mr Conley's misconduct has brought the nursing profession into disrepute; the public expect an experienced and well-trained nurse to act honestly, keep accurate records, and treat all patients with dignity and respect, particularly when they are vulnerable and in a sensitive environment.

The panel next considered that honesty and integrity are fundamental tenets of the Code, sitting alongside the other breaches of the Code highlighted earlier in this determination. Mr Conley's actions clearly breached these fundamental tenets.

The panel reminded itself of its finding that Mr Conley had acted dishonestly (in relation to Charges 1 and 2), and considered afresh that there was no evidence before it from Mr Conley to demonstrate any insight, remorse, or attempts at remediation. Taking this into account, the panel was not confident that Mr Conley would not repeat his dishonest conduct.

The panel bore in mind that the overarching objective of the NMC is 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.

Having regard to all of the above, the panel was satisfied that Mr Conley's fitness to practise is currently impaired; such a finding being necessary for the protection of the public, and is otherwise in the public interest.

The original panel determined the following with regard to sanction:

The panel considered the aggravating factors in this case to be as follows:

- *Mr Conley has not engaged with these proceedings, and has not to-date shown any insight into his actions, or their potential impact;*
- *Mr Conley's misconduct involved vulnerable patients;*
- *Mr Conley's misconduct relates to more than one incident involving vulnerable patients on separate occasions;*
- *Mr Conley exhibited conduct which put patients at an unwarranted risk of harm; and*
- *Mr Conley's misconduct abused his position of trust in relation to Patient B, over whom Mr Conley had a duty of care.*

The panel considered the mitigating factors in this case to be as follows:

- *there is no evidence that Mr Conley's misconduct has subsequently been repeated;*
- *the panel heard evidence that the responsibility for the "bed board" to be updated was not solely that of Mr Conley; and*
- *the panel heard evidence of a difficult culture on the ward, in that there was an insufficient level of management support in the workplace, and the ward was short-staffed in a particularly challenging and stressful environment.*

The panel first considered the NMC guidance on cases involving dishonesty. It took into account that not all dishonesty is equally serious, and reminded itself of its previous finding that the level of dishonesty in this case was at the lower end of the spectrum. The panel considered that there was no evidence before it that

Mr Conley attempted to cover up his actions, nor did he act for personal, financial, or professional gain. It determined that there was no direct risk to patients through Mr Conley's dishonesty, nor was the dishonesty at issue premeditated, systemic, or longstanding in its deception; it was a one-off moment of opportunistic misconduct.

The panel next considered whether to take no action but concluded that this would be inappropriate in view of the seriousness and nature of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action, nor would the public be adequately protected by such a sanction.

In the light of the panel's earlier findings with regard to future risk, the panel concluded that a caution order would not be sufficient to protect patients or the wider public interest.

The panel next considered whether placing conditions of practice on Mr Conley's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that, whilst aspects of the misconduct in this case were remediable, given Mr Conley's lack of engagement to-date and that there was no information before the panel concerning his current work circumstances, the panel could not formulate practical or workable conditions. In addition, to impose conditions of practice would be inappropriate in light of Mr Conley's dishonesty (which cannot be remedied through training); furthermore, the panel had no evidence before it that Mr Conley was willing to engage with any conditions that the panel could formulate.

The panel concluded that the placing of conditions on Mr Conley's registration would not adequately address the seriousness of this case and would not sufficiently protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered that, having regard to the particular circumstances in which the incidents occurred in this case, Mr Conley's misconduct was not fundamentally incompatible with remaining on the register, and that public confidence in the NMC and the professions could be maintained by only a temporary removal from the register.

The panel first noted that the misconduct related to two separate, yet isolated, incidents, and it had no evidence before it that Mr Conley had repeated his misconduct; furthermore, there was no evidence before the panel of any deep-seated personality or attitudinal problems. However, in light of Mr Conley's lack of engagement with the NMC, the panel could not be satisfied that he has any degree of insight into his actions, and therefore there remains a risk that he might repeat his behaviour.

The panel gave serious consideration to the context in which Mr Conley's misconduct arose and considered the evidence before it of the culture on the relevant ward, namely a very challenging environment coupled with insufficient management support and staffing. The panel determined that such a culture may have contributed to Mr Conley's misconduct. The panel reminded itself of the evidence of Mr 3 that he believed that Mr Conley may have acted as he did under pressure from others; furthermore Mr 3 was also complimentary of Mr Conley's previous practice and how he worked well with patients' relatives.

Furthermore, in relation to the incident concerning Patient B, the panel was mindful that Mr Conley was dealing with an aggressive and challenging patient, and he did not receive the level of support or assistance that his two colleagues could have given, even without asking.

The panel was mindful of the public interest in providing an otherwise competent nurse with the opportunity to return to the register at a later date, once their

practice has been adequately remediated and their misconduct appropriately addressed.

The panel determined that, were a reasonable member of the public aware of all of the facts available to this panel and had heard the evidence in the case, that person would consider a suspension order to be the most appropriate and proportionate sanction in this case. The panel concluded that, at this stage, a suspension order for an appropriate length of time would sufficiently protect the public and address the public interest in this case, whilst allowing Mr Conley a final opportunity to engage with his regulator and remediate his misconduct.

The panel gave serious consideration as to whether, given its finding of dishonesty and Mr Conley's present lack of insight, a striking-off order would be proportionate in Mr Conley's case. Taking account of all the information before it (including its findings that the dishonest conduct was at the lower end of the spectrum, contrasted against Mr Conley's lack of insight), the panel concluded that such a sanction would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Conley's case to impose a striking off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Conley. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 12 months was appropriate to mark the seriousness of the misconduct, and address the public

interest in this case. Such a period of time is intended to give Mr Conley a final opportunity to engage with the NMC and also to demonstrate evidence of insight into his misconduct and its impact to a reviewing panel, should he so choose. This panel was mindful of the fact that, were Mr Conley not to choose to do so, he should be aware that the option of a striking off order would be open to a future reviewing panel.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. Any future panel may be assisted by evidence of:

- *engagement with the NMC;*
- *a robust written reflection using a recognised nursing model, demonstrating insight into Mr Conley's actions, their impact on patients, colleagues, the wider public, and the reputation of the profession;*
- *any testimonials from recent employers as to any employment undertaken by Mr Conley, paid or voluntary; and*
- *any training/learning undertaken, particularly in relation to record-keeping and the use of appropriate handling techniques to manage patients.*

Decision on current fitness to practise

The panel has considered carefully whether Mr Conley'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. 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 Mr Conley's fitness to practise remains impaired. It had no new information before it to indicate a material change in circumstances. Mr Conley has not engaged with the NMC since the original hearing and, as such, has not provided any indication as to his current levels of remorse and insight into, or any attempts at remediation of, his misconduct. The panel concluded that there remains a risk of repetition of Mr Conley's serious professional misconduct.

For these reasons, the panel finds that Mr Conley's fitness to practise remains impaired, on grounds of public protection and public interest.

Determination on sanction

Having found Mr Conley'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 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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. To take no action would not adequately protect the public

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order. Such

a sanction would also not adequately protect the public, in the light of the panel's finding of current impairment on public protection grounds.

The panel considered whether to impose a conditions of practice order. Mr Conley has not engaged at all with the NMC; the panel had no confidence that he would engage with any conditions it could formulate. Furthermore, the panel had sight of the original misconduct found proved, and the fact that Mr Conley has demonstrated no insight, remorse, or remediation. The panel could not conceive of workable, practicable and proportionate conditions in the circumstances of the case.

The panel next considered imposing a further suspension order. It reminded itself of the original panel's determination on sanction, which included:

The panel gave serious consideration as to whether, given its finding of dishonesty and Mr Conley's present lack of insight, a striking-off order would be proportionate in Mr Conley's case. Taking account of all the information before it (including its findings that the dishonest conduct was at the lower end of the spectrum, contrasted against Mr Conley's lack of insight), the panel concluded that such a sanction would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Conley's case to impose a striking off order.

...

The panel determined that a suspension order for a period of 12 months was appropriate to mark the seriousness of the misconduct, and address the public interest in this case. Such a period of time is intended to give Mr Conley a final opportunity to engage with the NMC and also to demonstrate evidence of insight into his misconduct and its impact to a reviewing panel, should he so choose. This panel was mindful of the fact that, were Mr Conley not to choose to do so, he should be aware that the option of a striking off order would be open to a future reviewing panel.

This panel considered that Mr Conley has not shown remorse for his misconduct. Furthermore, he has not demonstrated any insight into his previous failings. The panel

was of the view that considerable evidence would be required to show that Mr Conley no longer posed a risk to the public. Mr Conley has not engaged with the NMC in relation to these proceedings and has provided no indication as to his levels of remorse, insight and remediation for his misconduct.

This 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 Mr Conley from practising 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 order will come into effect immediately, in accordance with Article 30(2).

This decision will be confirmed to Mr Conley in writing.

That concludes this determination.