

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

Substantive Order Review Hearing

10 October 2019

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

Name of registrant:	Elizabeth Anne Elsey
NMC PIN:	79Y2322E
Part(s) of the register:	Nursing – Sub Part 2 Registered Nurse – Adult (Level 2) (18 November 1980)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Jennifer Laing (Chair, Registrant member) Shorai Dzirambe (Registrant member) Geoffrey Baines (Lay member)
Legal Assessor:	Ben Stephenson
Panel Secretary:	Edmund Wylde
Elizabeth Anne Elsey:	Not present and not represented
Nursing and Midwifery Council:	Represented by Ruth Alabaster, Case Presenter
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)

Service of Notice of Hearing

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

The panel was informed that the notice of this hearing was sent to Ms Elsey on 4 September 2019 by recorded delivery and first class post to her registered address.

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 Ms Elsey. 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 Alabaster, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel noted that there had been no response from Ms Elsey in relation to the notice of hearing. She has not engaged with NMC correspondence since the substantive hearing concluded in October 2018.

The panel was satisfied that Ms Elsey had been sent notice of today's hearing and that she was or should be aware of today's hearing. The panel, therefore, concluded that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Ms Elsey's attendance; there is no application for an

adjournment from Ms Elsey. Having weighed the interests of Ms Elsey with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Ms Elsey's absence.

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 panel on 19 October 2018 for 12 months. The current order is due to expire at the end of 19 November 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:

1. *Whilst working as a Locum Practice Nurse at Clayhill Medical Practice inappropriately:*

a. *Accessed your own patient records and/or inappropriately re-authorised prescriptions for your own medication without GP authorisation on:*

- i. *24 March 15;*
- ii. *18 May 15.*

b. *Accessed your own patient records and/or inappropriately generated prescriptions for your own medication without GP authorisation on:*

- i. *24 March 15;*
- ii. *18 May 15;*
- iii. *11 June 15;*
- iv. *22 June 15;*
- v. *6 July 15;*
- vi. *8 Jan 16.*

- c. *Entered clinical information onto your own patient records on:*
 - i. 22 June 15;
 - ii. 13 July 15.

 - d. *Entered demographic information onto your own patient record on:*
 - i. 14 April 15.

 - e. *Accessed the patient records of Person A and inappropriately generated prescriptions for her without GP authorisation on:*
 - i. 1 June 15;
 - ii. 20 July 15;
 - iii. 8 Jan 16.

 - f. *Accessed Person B's records and/or inappropriately entered demographic information on 13 July 15.*
-
- 2. *Inappropriately accessed your own records and/or inappropriately generated prescriptions for your own medication without GP authorisation on:*
 - a. 26 Jan 16;
 - b. 26 April 17;
 - c. 16 May 17.

 - 3. *Inappropriately accessed Person A's records and/or inappropriately generated prescriptions for her without GP authorisation on 26 Jan 16.*

 - 4. *Inappropriately accessed Person A's records and/or inappropriately entered clinical information on 31 March 16.*

 - 5. *Your conduct at charges ... 2 and/or 3 was dishonest in that you knew that you did not have authority to generate prescriptions.*

6. *Your conduct at charges 2, 3 ... was dishonest in that you knew you were no longer authorised to access the system having left employment at Clayhill Medical Practice.*

7. *Informed the Clinical Commissioning Group that you had only generated prescriptions for yourself on two occasions when this was not the case in a meeting on:*
 - a. *2 June 17;*
 - b. *17 July 17.*

8. ...

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 had sight of Ms Elsey's response to the allegations before the NMC Case Examiners dated 8 September 2017. However, in assessing Ms Elsey's oral evidence, it considered her to have demonstrated limited insight into her behaviour in respect of charges 1, 2 and 3. Whilst Ms Elsey stated during her evidence that she has learnt that her actions were wrong and that she now knows not to do this, the panel was not satisfied that Ms Elsey fully appreciates why her actions were wrong, and the impact they could have had on herself, Person A and Person B. Furthermore, the panel also considered Ms Elsey to have limited insight into the dishonesty found proved. It considered Ms Elsey attempted to rationalise her reasons for being dishonest. The panel concluded that Ms Elsey did not demonstrate an understanding of the impact and consequences of her actions on others involved and the wider profession.

The panel took account of Ms Elsey's email dated 21 September 2018 to the NMC case officer, in which she stated that she is now working for BB Healthcare

and that “they are happy with my work”. Ms Elsey also states in this email “I have continued with study days and up coming[sic] training and have put all my problems put to good use in helping receptionists and other nurses not to be put in the position I am in”. However, the panel noted that Ms Elsey has not provided the NMC with any evidence of remediation as to the concerns identified. The panel noted that it is difficult to remediate dishonesty in any event.

Furthermore, the panel had no references or testimonials before it from Ms Elsey’s current employers. It noted that Ms Elsey had informed the NMC that they could contact BB Healthcare in regards to her nursing practice if concerns remained, however, the panel was of the view that it would be for Ms Elsey to provide any material to the panel if she wished to do so in support of her case.

Because of the lack of remorse, insight, and remediation provided by Ms Elsey into her behaviour, specifically her dishonest conduct, the panel could not be satisfied that there is now a low risk of similar misconduct.

In the circumstances as set out above, the panel determined that a finding of current impairment is required on the ground 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. Accordingly, the panel also concluded that a finding of impairment on public interest grounds is required.

For these reasons, the panel found that Ms Elsey’s fitness to practise is impaired by reason of her misconduct.

The original panel determined the following with regard to sanction:

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

As regards aggravating factors, the panel has considered the following as relevant:

- Ms Elsey abused her position as a former Locum Nurse at the Surgery by obtaining prescriptions outside of the Surgery’s usual process.*
- Ms Elsey’s dishonesty was for personal gain, albeit not a financial gain.*
- Ms Elsey put herself and Person A at risk of harm as a result of her conduct.*
- Ms Elsey’s misconduct was a pattern of behaviour spanning just over two years.*

As regards mitigating factors, the panel has considered the following as relevant:

- Ms Elsey made admissions at an early stage in proceedings.*

The panel acknowledged that Ms Elsey had, up until this time, a long nursing career without any adverse findings and has continued to work since the allegations were made without any complaints being made against her.

The panel noted Ms Elsey’s evidence that she currently suffers from health conditions and that she suffered from health conditions at the time of the allegations. However, Ms Elsey did not suggest that her health caused her to act inappropriately, nor had the panel so concluded. In those circumstances, the panel did not regard Ms Elsey’s health conditions to be a mitigating factor.

The panel found that Ms Elsey had abused her position as a former registered nurse at the Surgery to expedite the process of receiving medication for herself

and Person A, with the intention of gaining an advantage over other members of the public requiring healthcare. It considered Ms Elsey's dishonesty in doing this to be serious and noted that it was part of a pattern of behaviour rather than a single instance of misconduct.

The panel first considered whether to take no action but concluded that this would be wholly inappropriate in view of the seriousness of this case. Taking no further action would place no restriction on Ms Elsey's nursing practice, and therefore would not protect the public. Further, it would not address the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, 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 Ms Elsey's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case, as recognised at the misconduct stage of these proceedings. The panel noted that a caution order would not restrict Ms Elsey's clinical practice and therefore would not protect the public from the risk of harm identified. The panel decided that in light of Ms Elsey's serious failings, it would be neither proportionate, nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Elsey's registration would be a sufficient and appropriate response. Such an order is often appropriate where there are identifiable areas of practice in need of assessment or retraining. However, the most serious issue in this hearing is dishonesty, and the panel concluded that workable conditions could not be devised to cover that concern, nor would such an order be sufficient in light of the seriousness of the misconduct.

The panel then went on to consider whether a suspension order would be the appropriate sanction.

The panel considered whether the seriousness of this case could be addressed by temporary removal from the register and whether a period of suspension would be sufficient to protect patients and the public interest. When considering seriousness, the panel took into account the extent of the departure from the standards to be expected of a registered nurse and the risk of harm to the public interest caused by that departure.

The panel decided that a suspension order would be the appropriate and proportionate sanction in Ms Elsey's case.

Although there had been a clear breach of a fundamental tenet of the nursing profession and a significant departure from a number of the standards in the Code, the panel determined that Ms Elsey's misconduct is capable of remediation in principle.

The panel had found Ms Elsey to have demonstrated limited insight in respect of her conduct. Ms Elsey had stated in evidence that, with hindsight, she now realised that what she had done was wrong. Although Ms Elsey appeared to accept that her actions were wrong with the benefit of hindsight, the panel was of the view that Ms Elsey was still at a very early stage in understanding and reflecting on her poor judgement. The panel concluded that Ms Elsey had begun to recognise that her actions were wrong, but had not yet developed full insight in that regard. The panel bore in mind its finding that it could not yet exclude the risk of similar misconduct in the future, as it could not yet be satisfied that Ms Elsey has developed a sufficient understanding of how and why her nursing practice had fallen significantly below the standards expected of a registered nurse.

The panel was of the view that the maximum period of suspension would provide Ms Elsey with the opportunity to reflect on her behaviour and to develop an understanding of how to prevent similar misconduct from occurring in the future.

The panel determined that Ms Elsey's misconduct is not fundamentally incompatible with ongoing registration and that the public interest can be satisfied by a less severe outcome than permanent removal from the register.

The panel did consider whether a striking-off order was necessary in Ms Elsey's case. However, in taking account of all the information before it, the panel concluded that it would be disproportionate. The panel was of the view that the lesser sanction of suspension would satisfy the public protection and public interest concerns identified in this case. The panel decided that public confidence in the nursing profession and the NMC can be maintained by the imposition of a lengthy suspension order.

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

The panel noted that Ms Elsey is currently working as a registered nurse. This order will prevent her from doing so during the period in which it is in force. However, the panel considered that this order is necessary to mark the importance of maintaining public confidence in the nursing profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered nurse.

The panel decided that a suspension order for a period of 12 months was required to mark the seriousness of the misconduct.

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:

- *Continuing engagement with the NMC and Ms Elsey's attendance at the next review hearing (whether via WebEx or in person).*
- *A structured reflective piece using an accepted model of reflection (E.g. Gibbs).*
- *Any evidence of re-training in relation to the areas of concern, as well as any professional development undertaken by Ms Elsey in order to keep her nursing skills up to date.*
- *Any up to date testimonials or references from employers; whether in paid or unpaid employment.*

Decision on current fitness to practise

This panel has considered carefully whether Ms Elsey'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. It has taken account of the submissions made by Ms Alabaster, on behalf of the NMC. Ms Elsey has not provided any written representations for consideration, nor is she in attendance at the hearing today.

Ms Alabaster informed the panel of the background to this case and invited its attention to the relevant documentation before it. She submitted that the NMC have received no communication from Ms Elsey over the last year, and invited the panel to find that there is no objective evidence before it to make a finding that progress has been made. Ms Alabaster submitted that, given the findings of the original panel that development of insight was required to exclude a further risk of repetition of Ms Elsey's misconduct, as this panel has no evidence of such insight, a finding of impairment on the same grounds

is appropriate; there has been no positive progress, and this panel may feel that Ms Elsey's lack of engagement with the regulatory process amounts to a deterioration of circumstances. Ms Alabaster invited the panel to make a finding of current impairment on both public protection and public interest grounds.

In respect of matters of sanction, Ms Alabaster submitted that, in light of public protection concerns, it would be inappropriate for this panel to take no further action or impose a caution order. She further submitted that a conditions of practice order would be inappropriate, given the findings of the previous panel and Ms Elsey's lack of engagement; this panel has no evidence to suggest that Ms Elsey is motivated to comply with such an order, or that it could reasonably formulate practicable conditions.

Ms Alabaster submitted that it is open to this panel to extend the current suspension order for a short period of time, to give Ms Elsey another opportunity to engage with the regulatory process. She submitted that such a sanction, with a clear warning that it is a final opportunity, may meet the public protection and public interest concerns in this case.

Ms Alabaster submitted that demonstrating some evidence of developing, or developed, insight, where the main issue in a case is dishonesty is the minimum required for a panel to be satisfied that a registrant is suitable to remain on the register. She reminded the panel that matters of dishonesty are attitudinal and difficult to remediate, particularly without the engagement of a registrant.

Ms Alabaster submitted that, while the previous panel considered a striking-off order to be disproportionate at that stage, this panel may feel that, given the lack of engagement from Ms Elsey and no further evidence as to insight or remediation before this panel, such a sanction is no longer disproportionate and inappropriate.

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 Ms Elsey's fitness to practise remains impaired. It considered that, in the light of Ms Elsey's lack of engagement, there is no new information before it to indicate that the concerns about Ms Elsey's practice have been remediated, or indeed that attempts at remediation have been made; the risk of repetition remains live. This panel reminded itself of the previous panel's finding that Ms Elsey had only limited insight into her dishonest misconduct; there is no evidence of further insight before this panel.

This panel bore in mind that the previous panel provided clear recommendations as to how Ms Elsey might assist a reviewing panel to determine that her insight is developing; Ms Elsey has not taken this opportunity. This panel considered that Ms Elsey's failure to engage with the NMC is an exacerbating feature of the case, as professional nurses have a duty to engage with their regulator.

For these reasons, the panel had no choice but to find that Ms Elsey's fitness to practise remains impaired, on grounds of both public protection and public interest.

Determination on sanction

Having found Ms Elsey'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 risk of repetition identified and 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 also 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 and nature of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order; neither would such a sanction appropriately protect the public.

The panel considered whether to impose a conditions of practice order. In the light of Ms Elsey's lack of engagement, the panel was not satisfied that she would be willing to engage with any conditions that it could formulate. In any event, this panel could not conceive of workable or practicable conditions, as Ms Elsey's misconduct engages dishonesty, which is attitudinal in nature rather than relating to a specific area of clinical practice.

The panel next considered imposing a further suspension order. The panel noted that Ms Elsey has not shown remorse for her misconduct; furthermore, she has not demonstrated any insight into her previous failings, or made any attempts to remediate her failings. The panel was of the view that considerable evidence would be required to show that Ms Elsey no longer posed a risk to the public – evidence which, due to Ms Elsey's lack of engagement, has not been forthcoming. The panel determined that a further period of suspension, with no indication that Ms Elsey is willing to make, or has made, attempts at remediating her practice or develop her insight, would not serve any useful purpose in all of the circumstances.

The panel determined that it was necessary to take action to prevent Ms Elsey 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. Public confidence in nursing and the regulatory process would not be maintained, were any other sanction to be imposed.

Ms Elsey's misconduct, exacerbated by her lack of insight, remediation, and engagement with the NMC, is fundamentally incompatible with remaining on the register for any further period of time. This sanction will therefore come into effect immediately.

This decision will be confirmed to Ms Elsey in writing.

That concludes this determination.