

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
7 October 2019**

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

Name of registrant:	Rhoda Mende
NMC PIN:	06L0156E
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – March 2007
Area of Registered Address:	Staffordshire
Type of Case:	Misconduct
Panel Members:	Tim Mann (Chair, Lay member) Sarah Fleming (Registrant member) Linda Pascall (Registrant member)
Legal Assessor:	Ben Stephenson
Panel Secretary:	Caroline Pringle
Ms Mende:	Present and represented by Justin Meiland instructed by the Royal College of Nursing
Nursing and Midwifery Council:	Represented by Callum Munday, NMC Case Presenter
Order being reviewed:	Conditions of practice order (12 months)
Fitness to Practise:	Impaired
Outcome:	Conditions of practice order (3 years) to come into effect at the end of 15 November 2019 in accordance with Article 30 (1)

Decision and reasons on review of the current order

The panel decided to make a conditions of practice order for a period of three years. This order will come into effect at the end of 15 November 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fifth review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 23 November 2012 for three years. This order was reviewed on 20 November 2015 and varied and extended for a further 12 months. The order was reviewed again on 24 November 2016 and again extended for 12 months. The third review took place on 16 November 2017 and the order was varied and extended for 12 months. The last review took place of 12 October 2018 and the order was extended for another 12 months. The current order is due to expire at the end of 15 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, whilst employed as a Staff Nurse by Papworth Hospital NHS Foundation Trust:

1. *On 8 January 2010, and in relation to Patient A, who was being invasively ventilated:*
 - a. ...
 - b. *turned off the oxygen saturation monitor;*
 - c. *left Patient A unattended for approximately 5 minutes once you had removed the oxygen saturation probe and turned the oxygen saturation monitor off*

2. *On 24 March 2010, failed to follow a care plan for Patient B in that you did not give her an Aquasept bath for her MRSA treatment on the first attempt;*
3. *On 24 March 2010 failed to obtain the ECG (Electrocardiography) readings in a timely manner for a Patient;*
4. *On 24 March 2010, failed to complete an admission and risk procedure for Patient C appropriately in that you;*
 - a. *incorrectly completed a MUST (Malnutrition Universal Screening Tool) Score;*
 - b. *incorrectly completed a Braden Score;*
 - c. *incorrectly completed a Dependency Score;*
 - d. *failed to set up a suction unit or obtain resources needed to perform tracheal suction;*
 - e. *started an autonomic dysreflexia care plan instead of a minitracheostomy care plan*

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

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

The panel considered whether your fitness to practise remains impaired. The panel acknowledged that you have shown insight and demonstrated that you are keen to improve and maintain your clinical knowledge and skills. The panel noted that you have secured a job where you will be able to comply with your conditions of practice order, which is very positive. The panel noted however that, through no fault of your own, in the past you had not been able to address some of the concerns fully and that you had not been able to provide evidence that you are no longer impaired.

In its consideration of whether you have remedied your practice the panel took into account the training you have undertaken over the last six months and the reflective piece you have written. This panel has heard that you are now employed by Samuel Johnson Community Hospital but that you had only recently started your employment with them. Therefore, you have not had an opportunity to demonstrate remediation of the clinical shortcomings identified at the substantive hearing. The panel therefore finds that your fitness to practise is impaired on the grounds of public protection.

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 your fitness to practise remains impaired.

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

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition and the seriousness of the case. 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 be inappropriate for the same reason as taking no further action. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered extending the current conditions of practice order. The panel was of the view that any conditions imposed should protect the public, meet the public interest considerations in this case and also enable you to demonstrate remediation and return to safe and effective practice as a registered nurse in a supported manner. The panel considered that the employment you have now secured should give you the opportunity to receive supervision and training and give you the opportunity to carry out clinical duties such as suction for a patient with a tracheostomy. The panel concluded that you will need time to get a feel for a hospital setting again and that your family commitments may make it harder to meet the conditions in six months. The panel was of the view that a 12 months conditions of practice order is more appropriate as it will give you enough time to meet the conditions. The panel also noted that you can request an early review should you wish to do so.

Accordingly, the panel determined, to extend the current conditions of practice order for a period of 12 months, which will come into effect on 15 November 2018.

It therefore decided to impose the following conditions which it considered are appropriate and proportionate in this case:

- 1. You must notify the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
- 2. You must inform the NMC of any criminal or professional investigation started against you and any criminal or professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*

3. *You must place yourself and remain under the supervision of a registered nurse in the role of your work place line manager or supervisor, nominated by your employer only in the following specific areas of care, until which time they have signed you as competent to practise unsupervised:*
 - i) *Caring for patients who are invasively ventilated;*
 - ii) *Obtaining ECG monitoring and recording in a timely manner;*
 - iii) *Setting up a suction unit;*
 - iv) *Performing tracheal suction;*
 - v) *Completing a MUST score or equivalent;*
 - vi) *Completing a Braden score or equivalent;*
 - vii) *Completing a dependency score or equivalent.*
4. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your practice at least 14 days before any NMC review hearing or meeting.*
5. *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 (4) above, to them:*

In accordance with Article 30 (4) of the Nursing and Midwifery Order 2001 this conditions of practice order will come into immediate effect.

This order will be reviewed shortly before its expiry but can be reviewed earlier by either party if requested.”

The panel considered imposing a suspension order but decided that this would be wholly disproportionate in the circumstances and that they should facilitate your return to practise without conditions. The panel therefore decided that it would be disproportionate, inappropriate and contrary to the public interest to suspend you.

Decision on current fitness to practise

The panel considered carefully whether your 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 decisions and reasons of the previous panels and a bundle of documents provided by you. This included two references from colleagues, a reflective statement from yourself and a number of RCNi training certificates. The panel also took account of the submissions made by Mr Munday on behalf of the NMC and those made by Mr Meiland on your behalf.

Mr Munday outlined the background of the case. He submitted that it was encouraging to see that you have continued to engage with the conditions and have completed further relevant training. However, Mr Munday submitted that as you have not been working in a hospital environment, you have not had the opportunity to demonstrate your competency in the specific areas identified by the conditions of practice, which relate to the ventilation of patients. In these circumstances, Mr Munday submitted that your fitness to practise remains impaired and invited the panel to continue the current conditions of practice order.

Mr Meiland, on your behalf, accepted that your fitness to practise remains impaired and invited the panel to continue the current conditions of practice order, subject to some minor points of clarification.

Mr Meiland informed the panel that you currently work in care homes as an agency nurse. He told the panel that you work 44 – 55 hours per week and the majority of this is undertaken at Alma Court Care Home. You did obtain employment as a bank nurse on a rehabilitation ward at the Samuel Johnson Hospital but have not worked there since January 2019.

Mr Meiland drew the panel's attention to the online training you have completed, which included a course on caring for tracheostomy patients, as well as the two positive testimonials from a colleague at Alma Court Care Home and the Director of the agency for whom you work. However he accepted that, as you have been working in care homes, you have not had any direct experience of caring for patients with tracheostomies and therefore have not been able to remediate the specific concerns regarding your practice. Mr Meiland told the panel that you intend to remain working in care homes as you find the work more flexible and less stressful.

In these circumstances, Mr Meiland invited the panel to continue the current interim conditions of practice order. He submitted that this was the proportionate outcome as there are no concerns about your general competency as a nurse and a suspension order would be "financially devastating" for you.

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 your fitness to practise remains impaired.

The panel acknowledged that you have continued to engage with these proceedings and have undertaken additional online training in relation to tracheostomy care. It also had regard to the positive testimonials from both your Agency Director and your colleague from Alma Court Home, both of which spoke highly of your general nursing skills and attitude. However, the panel noted that as you have not been working in a hospital environment you have not had any exposure to patients with tracheostomies or other ventilation needs. You have therefore not had an opportunity to be assessed as competent in the specific skills required by condition 3. In these circumstances, the panel concluded that your fitness to practise remains impaired on public protection grounds.

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 continued to be required.

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 29 of the Order. The panel also took account of the NMC's Sanctions Guidance and 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 first considered whether to take no action but concluded that this would be inappropriate as it would place no restrictions of your practice and therefore not protect the public from the identified risk of harm. The panel also 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 for the same reasons.

The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting that the concerns related to a very specific area of your nursing practice, there is no evidence of general incompetence and you have been working safely as an agency nurse in care homes. The panel considered the suggested amendments put forward by Mr Meiland, on your behalf. It was of the view that it would be appropriate to specify whether the supervision required in condition 3 was indirect or direct. The panel considered that, as you have not been involved in the care of tracheostomy patients for several years now, direct supervision would be required to protect patients in the event that you carried out any of the task or skills specified in conditions 3. The panel bore in mind Mr Meiland's submissions that you had undergone training in, and had completed, MUST, Braden and dependency scores but decided that, in the absence of any evidence of this, it was appropriate that these competencies remain as part of condition 3. It also had regard to Mr Meiland's submission in relation to specifying that condition 3 applied only to hospital settings. However, in the panel's view this was not appropriate as it is possible that you may have to use these skills outside of a hospital environment.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a conditions of practice order which will come into effect upon the expiry of the existing order, namely at the end of 15 November 2019. It decided to impose the following conditions, which are the same as the previous conditions save for the addition of the word "direct" in condition 3:

1. You must notify the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.

2. You must inform the NMC of any criminal or professional investigation started against you and any criminal or professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
3. You must place yourself and remain under the direct supervision of a registered nurse in the role of your work place line manager or supervisor, nominated by your employer only in the following specific areas of care, until which time they have signed you as competent to practise unsupervised:
 - i) Caring for patients who are invasively ventilated;
 - ii) Obtaining ECG monitoring and recording in a timely manner;
 - iii) Setting up a suction unit;
 - iv) Performing tracheal suction;
 - v) Completing a MUST score or equivalent;
 - vi) Completing a Braden score or equivalent;
 - vii) Completing a dependency score or equivalent.
4. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your practice at least 14 days before any NMC review hearing or meeting.
5. 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 (4) above, to them:

This order will be for a period of three years. The panel considered that this period of time would afford you sufficient time to obtain employment in a hospital setting, if you so wish, and demonstrate compliance with the conditions of practice. You can apply for an early review at any time, if your situation changes.

Before this order expires, it will be reviewed by another panel. At that review, the panel may be assisted by:

- evidence to demonstrate your compliance with any of the conditions, specifically the competencies listed in condition 3;
- an up to date reflective piece; and

- any information or evidence regarding your future career intentions.

This decision will be confirmed to you in writing.

That concludes this determination.