

Fitness to Practise Committee

Substantive Hearing

21-25 October 2019

Nursing and Midwifery Council

Regus, Forsyth House, Cromac Square, Belfast, BT2 8LA

Name of Registrant Nurse:	Julie Miller
NMC PIN:	89G0043N
Part of the register:	Nursing, Sub part 1 RN1, Registered Nurse- Adult (25 November 1992)
Area of Registered Address:	Northern Ireland
Type of Case:	Misconduct
Panel Members:	Paul Powici (Chair, Lay member) Jude Bayly (Registrant member) Mary Jane Scattergood (Registrant member)
Legal Assessor:	Attracta Wilson
Panel Secretary:	Aoife Kennedy
Ms Miller:	Not present and not represented in her absence
Nursing and Midwifery Council:	Represented by Sarah Lewis, on behalf of the NMC Regulatory Legal Team.
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision on Service of Notice of Hearing:

The panel was informed at the start of this hearing that Ms Miller was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 19 September 2019. Royal Mail "Track and Trace" documentation confirmed that the notice of hearing was sent to Ms Miller's registered address by recorded delivery on that date and signed for at her address on 19 September 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Ms Miller's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. Ms Lewis submitted the Nursing and Midwifery Council (NMC) had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Miller has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Registrant:

Ms Lewis invited the panel to continue in the absence of Ms Miller on the basis that there was no reason to believe that an adjournment would secure her attendance on some future occasion. She reminded the panel that there were three witnesses scheduled to attend this hearing, and any delay would inconvenience them and would be likely to impact on their memory of events.

Ms Lewis drew the panel's attention to an email from Ms Miller's representative at BLM Solicitors dated 15 October 2019, which stated that he no longer represented Ms Miller and would not be attending this hearing. Further, Ms Lewis drew the panel's attention to a number of attempts by the NMC to contact Ms Miller via telephone and email correspondence on 16 and 17 October 2019. In an email from Ms Miller to the NMC dated 17 October 2019 she said that she could not continue with the process and she "will never work as a registered nurse again." In a subsequent email dated 20 October 2019 Ms Miller reiterates that she "will not be able to put myself through any more meetings/interviews".

The panel accepted the advice of the legal assessor and noted that it must exercise great care and caution in deciding whether or not to proceed.

The panel directed the NMC to attempt to contact Ms Miller again to clarify whether she sought an adjournment and, [PRIVATE]. Alternatively, the panel directed the NMC to ask Ms Miller if she would like to attend any part of this hearing, whether it be in person or via telephone.

The panel allowed Ms Miller some time to respond and resumed the following morning. Ms Lewis presented to the panel an email response from Ms Miller dated 21 October 2019 in which she stated that she was unable to attend this hearing due to her health, and that she does not anticipate she will be able to attend in the near future.

The panel has decided to proceed in the absence of Ms Miller. It has had regard to the overall interests of justice and fairness to all parties. It noted:

- Ms Miller has not provided any evidence in respect of [PRIVATE] whether she would be able to attend a hearing at a future date;
- She has not applied for an adjournment;
- There is therefore no reason to suppose that an adjournment would secure her attendance;

- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious disposal of this case;
- Three witnesses have been scheduled to attend this hearing and any delay would likely inconvenience them and impact on their memory of events.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms Miller.

Detail of charges

That you a registered nurse, on 29 November 2015 whilst working at Altnagelvin Hospital;

- 1) Took 14 Zopiclone 7.5mg tablets from the drugs room on Ward 4 (gynaecology)
- 2) Your actions in charge 1 were dishonest, as you misappropriated the tablets without your employer's knowledge or permission.
- 3) Incorrectly removed a strip of medication from its box.
- 4) Incorrectly transported and/or stored medication in a plastic bag.
- 5) Did not record what drugs you had removed from the drugs cupboard.

And in light of the above your fitness to practice is impaired by reason of your misconduct

Background

Ms Miller was employed as a registered nurse at Ward 4 at the Altnagelvin Area Hospital (“the Hospital”). She had worked in the Hospital for over 21 years.

On 29 November 2015, Ms Miller was recorded on CCTV footage removing various strips of tablets from the medicine cupboard and placing them into a plastic bag. It is alleged that these included a strip of 14 Zopiclone 7.5mg tablets. It is alleged that Ms Miller did not record her actions. Ms Miller was one of two registered nurses on duty with access to the drugs room where Zopiclone was kept.

Ms Miller was suspended from her employment on 3 March 2016 and subsequently a referral was received from the Assistant Director of Nursing at the Hospital on 26 April 2016.

Ms Miller was dismissed following the conclusion of the Trust’s investigation.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence in this case together with the submissions made by Ms Lewis, on behalf of the NMC.

The panel accepted the advice of the legal assessor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel is satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard oral evidence from three witness tendered on behalf of the NMC:

- Ms 1, Ward Sister on Ward 4 at the Hospital
- Ms 2, Consultant in Obstetrics and Gynaecology at the Hospital
- Ms 3, Head of Pharmacy and Medicines Management at the Hospital

The panel considered that Ms 1 was a credible and honest witness, and was candid regarding a discrepancy between two documents within the bundle.

The panel considered that Ms 2 was a clear and credible witness, and was measured in her responses.

The panel considered that Ms 3 was a credible and reliable witness, and tried to assist the panel where possible

The panel considered the response of Ms Miller in the Case Management Form, together with replies given by her during a Police Service of Northern Ireland (“PSNI”) investigation, and when interviewed as part of the Trust’s internal investigation.

The panel considered the charges against you and made the following findings:

1) Took 14 Zopiclone 7.5mg tablets from the drugs room on Ward 4 (gynaecology)

The panel took into account the evidence of Ms 1, who identified Ms Miller as the nurse in the drugs storage room in the CCTV footage which was viewed by the panel and Ms 1. She informed the panel that she had originally viewed the CCTV footage at Strand Police Station in February 2016. Ms 1's evidence was that the CCTV footage showed Ms Miller taking medication strips from the cupboard, including from the precise location where Zopiclone was stored. Ms 1 gave evidence that the CCTV footage she viewed at Strand Police station was much clearer than that viewed during this hearing. Her evidence was that she could see from the better quality footage that the box of medication, from which a strip was taken, was removed from the drawer marked 'U-Z'. This box was pink and white, the same colours as Zopiclone 7.5 mg boxes.

Ms 1 also gave evidence that there was a discrepancy of 14 Zopiclone 7.5mg tablets on the counting sheet between 29 and 30 November, and confirmed that the counting sheet in Exhibit 3 was the correct sheet.

The panel noted Ms 1's written and oral evidence that she was 100% sure that one of the strips that Ms Miller took on 29 November 2019 was a strip of Zopiclone 7.5mg.

The panel noted Ms Miller's consistent denial in her Case Management Form, the PSNI interview, and the minutes of the Trust's investigation proceedings. However, having viewed the CCTV footage and heard the evidence of Ms 1, the panel considered that on the balance of probabilities Ms Miller took 14 Zopiclone 7.5mg tablets from the drugs room on Ward 4 without her employers knowledge or permission.

The panel therefore found Charge 1 **PROVED**.

2) Your actions in charge 1 were dishonest, as you misappropriated the tablets without your employer's knowledge or permission.

The panel took into account that a decision was made by the Director of Public Prosecutions not to prosecute in relation to these charges. However, it reminded itself that a higher standard of proof is required for criminal proceedings than in these NMC proceedings.

The panel took into account the evidence from Ms 1, Ms 2 and Ms 3 that Zopiclone is not a drug that was used for outpatients or clinics held on the Gynaecology Ward.

The panel noted Ms Miller's denial in her Case Management Form, her PSNI interview, and the Trust investigation. However, taking into account the consistency of the witness evidence and the CCTV footage, the panel is satisfied that Ms Miller took the Zopiclone 7.5mg strip without the knowledge or permission of her employer. The panel considered the explanation given by Ms Miller. Her explanation was inconsistent with the evidence given by Ms 1, Ms 2 and Ms 3. Ms Miller's explanation varied as to where she had stored the drugs she had removed from the medicines cupboard on 29 November. She explained in varying accounts that she had stored them in a cupboard beside Ms 2's desk, and/or had returned them to the medicines cupboard on the Ward. A drug count was conducted on 30 November 2015 by Ms 1, which did not account for the missing drugs in the medicines cupboard nor were they found in the clinic room cupboard. The panel took into account that Ms Miller was an experienced nurse, that she had worked on the Gynaecology department for a significant length of time, and would have been aware that Zopiclone was not used in outpatient clinics, as well as that there being a Trust Medication Code in place which Ms Miller did not follow.

The panel therefore considered that, having applied the test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, overall Ms Miller's actions in charge 1 were dishonest.

The panel therefore found Charge 2 **PROVED**.

3) Incorrectly removed a strip of medication from its box.

The panel took into account the evidence of Ms 1 and Ms 3 that there were clear policies and procedures in place at the time that medication strips should not be removed from the boxes. Ms 3 gave evidence that it was important that a nurse take the whole box when administering a drug to patients, not just the strip. Ms 3 explained that this is important for identification of the medicine, to access the batch number, the expiry date, and the information leaflet.

The panel noted the CCTV footage and the evidence of Ms 1 and Ms 3, and considered that Ms Miller had incorrectly removed a strip of medication from its box.

The panel therefore found Charge 3 **PROVED**.

4) Incorrectly transported and/or stored medication in a plastic bag.

The panel took into account the evidence of Ms 1 and Ms 3 that they identified Ms Miller in the CCTV footage storing medication in a plastic bag. Both Ms 1 and Ms 3 gave evidence that a plastic bag should never be used to transport medications, but that they should be placed in a medication trolley. Ms 3 gave evidence in relation to the Transfer Policy of the Trust, that if a nurse had in theory been asked to transfer medication, a transfer form should have been completed and drugs should have been transferred in their original box and not as an individual strip.

The panel noted Ms Miller's response to the allegation in her disciplinary hearing. However, in the light of the CCTV footage and the evidence of Ms 1 and Ms 3, the panel considered that on the balance of probabilities Ms Miller did incorrectly transport and store medication in a plastic bag.

The panel therefore found Charge 3 **PROVED**.

5) Did not record what drugs you had removed from the drugs cupboard.

The panel took into account the CCTV footage of Ms Miller in the drugs storage room and considered that there was more than one strip of medication put into a plastic bag. The panel also took into account Ms Miller's admission on her Case Management Form that she did not record what drugs she had removed from the drugs cupboard. This admission is congruent to the evidence of Ms 1 and Ms 3.

The panel therefore found Charge 5 **PROVED** by admission.

Decision and reasons on misconduct and impairment

Having announced its findings on the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Ms Miller's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel considered all of the information before it and heard submissions from Ms Lewis, on behalf of the Nursing and Midwifery Council (NMC).

Ms Lewis invited the panel to take the view that Ms Miller's actions amount to breaches of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code"). She then directed the panel to specific paragraphs and identified why, in the NMC's view, Ms Miller's actions amounted to misconduct.

With regard to impairment, Ms Lewis referred to the need to protect the public and the wider public interest which includes the need to declare and maintain proper standards of conduct and behaviour and to maintain public confidence in the profession and in the NMC as a regulatory body.

Ms Lewis submitted that the NMC's position is that Ms Miller's fitness to practise is impaired on both public protection and public interest grounds. She further submitted that, as Ms Miller has demonstrated no insight or remediation, there remains a risk of repetition of Ms Miller's misconduct and that a finding of no impairment would not mark the serious nature of Ms Miller's misconduct.

The panel accepted the advice of the legal assessor.

The panel was aware that the decision on misconduct was a matter for its own professional judgement.

The panel adopted a two-stage process in its consideration. First, it must determine whether the facts found proved amount to misconduct. Second, if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms Miller's fitness to practise is currently impaired as a result of that misconduct.

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Code.

The panel found that Ms Miller's actions did fall significantly short of the standards expected of a registered nurse, and that they amounted to breaches of the Code, specifically:

10.3 complete all records accurately ...

18.4 take all steps to keep medicines stored securely

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times ...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel has found that Ms Miller's actions amounted to a serious breach of professional standards, by incorrectly and dishonestly removing and storing medication, and failing to record that she had done so.

The panel was in no doubt that Ms Miller's actions, including her dishonesty, did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel then considered whether as a result of this misconduct Ms Miller's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to provide a high standard of care. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. The panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision; in paragraph 74, she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past, and/or is she liable in the future to act dishonestly.

The panel found that Ms Miller's misconduct engaged parts a, b, c and d of paragraph 76 of the Grant judgment. In particular, her actions brought the profession into disrepute, and this misconduct amounted to a breach of the fundamental tenets of the profession to maintain honesty and integrity.

Regarding insight, the panel had no recent information from Ms Miller to demonstrate any insight into her misconduct, or any indication that she would not repeat this misconduct in future. The panel noted in the Trust investigation report that Ms Miller denied taking the Zopiclone 7.5mg tablets, although she also said that in relation to other matters she knew it was "stupid and wrong".

In its consideration of whether Ms Miller has remedied her failings, the panel found that dishonesty is difficult to remediate. The panel noted that Ms Miller made admissions to charge 5 in her Case Management Form ("CMF"). However, she continues to deny the other charges. The panel had sight of an email from Ms Miller dated 24 October 2019, having been sent the panel's findings on facts, in which she stated:

“I am totally devastated but I totally understand with me not being able to attend. **[PRIVATE]**”

Ms Miller has not provided a reflective piece or demonstrated meaningful insight into her misconduct. The panel noted the reference dated 25 January 2019 from Northwest Care, although it has no information as to whether Ms Miller is currently employed.

In all the circumstances, the panel considered that, given Ms Miller’s lack of insight or remediation, there remains a risk of repetition of her misconduct. The panel therefore determined that a finding of impairment is necessary on public protection grounds.

The panel next considered whether a finding of impairment on public interest grounds was required. It 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 protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions. The panel determined that a finding of impairment on the ground of public interest was required. Ms Miller’s misconduct was dishonest and involved misappropriating medication without her employer’s knowledge or consent, and incorrectly transporting and storing medication, and a failure to record this. In the circumstances, members of the public would expect such misconduct to be marked by a finding of current impairment.

Accordingly, the panel concluded that Ms Miller’s fitness to practise is currently impaired on both public protection and public interest grounds.

Determination on sanction:

Having decided that Ms Miller's fitness to practise is impaired, the panel has considered what sanction, if any, it should impose. In reaching its decision, the panel has considered all of the evidence provided, together with the submissions of Ms Lewis, on behalf of the NMC.

The panel accepted the advice of the legal assessor, who referred it to the case of *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898.

The panel has considered this case carefully and has decided to make a striking off order.

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 published by the NMC. It had regard to the need to protect the public as well as the wider public interest. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Before making its decision on the appropriate sanction, the panel considered the aggravating and mitigating features in Ms Miller's case.

The panel considered the aggravating features to be:

- Ms Miller has not demonstrated insight or remorse into her misconduct;
- Her misconduct was a breach of a position of trust;
- Her actions put patients at potential risk of harm.

The panel considered the mitigating features to be:

- This was an isolated incident;
- Ms Miller had previously engaged with the NMC and was represented until recently;

- Ms Miller submitted a positive testimonial from an employer dated 25 January 2019;
- Ms 1 and Ms 2 gave evidence that Ms Miller was a good nurse.

In assessing the aggravating and mitigating features, the panel had careful regard to the overall context of this matter and the background evidence that it heard. The panel considered communications from Ms Miller indicating that her non-attendance at this hearing was due to her health. However, it noted that Ms Miller was assessed to be fit for work at the time of these events. In recent communication, Ms Miller said her health was poor. She was invited to send medical evidence to the panel, but did not do so. The panel noted that Ms Miller's misconduct was serious and involved dishonesty. She has not meaningfully engaged with these NMC proceedings and has not demonstrated remorse or insight.

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 protect the public, nor be in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the 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 Ms Miller's impairment is not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the risk of repetition identified, nor would it protect the public. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered imposing a Conditions of Practice Order. The panel noted that the concerns relate to Ms Miller incorrectly and dishonestly removing and storing medication, and failing to record that she had done so. It considered that her dishonesty was so serious that it could not be addressed by a conditions of practice

order, nor did the panel have any information that she would be willing to comply with any conditions. In these circumstances, the panel considered that a conditions of practice order would not be appropriate at this stage.

The panel next considered the imposition of a Suspension Order. The panel noted that this was an isolated, albeit serious, incident. However, Ms Miller has not meaningfully engaged with the NMC, has not demonstrated remorse or insight into her actions, and has not remediated her misconduct.

Ms Miller deliberately removed and stored medication, failing to record that she had done so. The panel considered that her actions were dishonest and serious, and did bring the nursing profession into disrepute. Her conduct was a significant departure from the standards expected of a registered nurse and a serious breach of the fundamental tenets of the profession. The panel considered that her actions, and lack of insight and remorse are fundamentally incompatible with her remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

The panel then went on to consider whether a striking-off order would be appropriate and proportionate in the circumstances.

The panel has a duty to uphold proper standards of conduct. The panel was of the view that the findings in this particular case demonstrate that Ms Miller's actions were extremely serious and were dishonest. To allow her to continue practising would not protect the public and would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Ms Miller's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public and 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.

This will be confirmed to Ms Miller in writing.

Decision on interim order and reasons:

The panel has considered the submission made by Ms Lewis, on behalf of the NMC, that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim order was necessary for the protection of the public and was otherwise in the public interest. In reaching the decision to impose an interim order, the panel had regard to the reasons set out in its decision for the substantive order. The panel decided to impose an interim suspension order for the same reasons as it imposed the substantive order. To do otherwise would be incompatible with its earlier findings. The panel did not consider that an interim conditions of practice order was appropriate in this case for the same reasons as given in the determination on sanction.

The period of this interim suspension order is for 18 months to allow for the possibility of an appeal to be made and determined. If no appeal is made then the interim order will be replaced by the substantive order 28 days after Ms Miller sent the decision of this hearing in writing.

That concludes this determination.

This decision will be confirmed to Ms Miller in writing.