

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing

09 October 2019

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

Name of registrant:	Salome Pierre
NMC PIN:	88A0007O
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – February 2000
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Jennifer Laing (Chair, Registrant member) Geoffrey Baines (Lay member) Linda Tapson (Registrant member)
Legal Assessor:	Ben Stephenson
Panel Secretary:	Roshani Wanigasinghe
Mr Pierre:	Not present and not represented in absence
Nursing and Midwifery Council:	Ruth Alabaster, Case presenter
Order being reviewed:	Suspension order (6 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 11 October 2019 in accordance with Article 30 (1)

Service of notice of hearing:

The panel was informed at the start of this hearing by Ms Alabaster that Mr Pierre was not in attendance, nor was he represented in his absence.

Ms Alabaster informed the panel that, due to a lack of communication from Mr Pierre, the NMC conducted inquiries to establish any change to his WIISER address. This was unsuccessful. The NMC therefore sent notice of the hearing to Mr Pierre's last known address, as recorded on the NMC's WISER system. This notice was sent on 10 September 2019 by recorded delivery and first class post. Ms Alabaster further told the panel that the Royal mail Track and Trace documentation indicates that it was signed for by the printed name of 'Salome' on 11 September 2019. She also told the panel that the NMC had made further attempts to contact Mr Pierre on 19 September via email explaining the importance of engagement and details regarding today's hearing.

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). It noted that the Rules do not require proof of delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Proceeding in absence:

The panel then considered proceeding in the absence of Mr Pierre. 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.

Ms Alabaster invited the panel to proceed in the absence of Mr Pierre. She submitted that there had been no communication from Mr Pierre since the notice was served or over the course of the proceedings, and there was no reason to suppose that adjourning today would secure his attendance. She submitted that it was in the interests of justice to proceed today in the absence of Mr Pierre. She further submitted that the Royal Mail Track and Trace document indicated that the notice was signed for by the name of 'Salome' suggesting that either he or a member of his family has received the documentation and therefore it is likely that Mr Pierre is aware of today's hearing.

The panel noted that it is the responsibility of any registrant to maintain an effective and up-to-date address and the NMC had made other recent attempts to contact him by email. Despite this, there has been no contact from Mr Pierre for over two years. The panel therefore had no reason to believe that an adjournment would result in his attendance.

The panel also noted that the current order is due to expire at the end of 11 October 2019 and there is therefore a public interest in proceeding today so that the panel can review the order and ensure that the public remains protected.

Having weighed the interests of Mr Pierre with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Pierre's absence.

Decision and reasons on review of the current order:

The panel decided to make a striking-off order. This order will come into effect at the end of 11 October 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of an order, originally imposed by the Conduct and Competence Committee on 10 March 2017 for a period of two years. The first reviewing panel imposed a suspension order on 14 March 2019 for a period of 6 months. The current order is due to expire at the end of 11 October 2019.

The panel is reviewing the order pursuant to Article 30 (1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

“That you, a registered nurse, whilst employed at King’s College Hospital NHS Foundation Trust:

1. On or about 20 February 2015 failed to ensure that Patient A was contacted following an equivocal Gonorrhoea test; or in the alternative, failed to document what action you had taken to ensure that the patient was contacted;
2. On 26 January 2015 in relation to Patient B:
 - 2.1 Failed to offer Hepatitis A vaccination; or in the alternative, failed to record that you had administered Hepatitis A vaccination;
 - 2.2 Failed to record that you had administered Hepatitis B vaccination;
 - 2.3 ...
3. On 26 January 2015 in relation to Patient B:
 - 3.1 administered Hepatitis A vaccination without a valid prescription, or in the alternative, you did not record that you had administered Hepatitis A vaccine under the Patient Group Direction (PGD);
 - 3.2 administered Hepatitis B vaccination without a valid prescription, or in the alternative, you did not record that you had administered Hepatitis B vaccine under the Patient Group Direction (PGD);
4. ...

5. On 18 December 2014 failed to conduct Chlamydia and Gonorrhoea NAAT tests on Patient C and/or failed to adequately document your actions in respect of these tests.
6. ...

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

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

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

The panel had regard to all of the documentation before it, including the decision and reasons of the original substantive panel from March 2017. It also took account of the submissions made by Ms Fleck on behalf of the NMC.

Ms Fleck outlined the background of the case. She submitted that, in the absence of any further information from Mr Pierre regarding his insight and remediation, his fitness to practise remains impaired. She submitted that a conditions of practice order is no longer workable, due to Mr Pierre’s lack of engagement, and invited the panel to consider imposing a more restrictive sanction.

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 Pierre's fitness to practise remains impaired.

This panel was of the view that the shortcomings in Mr Pierre's practice are easily capable of remediation, as they relate primarily to record keeping. However, like the original panel, this panel had no evidence from Mr Pierre that he has taken any steps to do so. Mr Pierre has provided no evidence of compliance with the conditions of practice order, nor any of the information suggested by the previous panel.

This panel also noted that the original panel found that Mr Pierre had demonstrated limited insight, remorse or recognition for how his actions may have impacted upon patient safety. This panel had no new information from Mr Pierre to suggest that his insight had developed any further during the past two years.

In the absence of developed insight or remediation, this panel concluded that there remains a risk that Mr Pierre would repeat record keeping errors of the kind found proved if he were allowed to return to unrestricted practice. This could place patients at a risk of harm. The panel therefore determined that a finding of current impairment remains necessary, both on the grounds of public protection and public interest.

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

Having found Mr Pierre'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 also took into account 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 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.

The panel then considered whether to impose a caution order but concluded that this would also 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 impose a caution order.

The panel next considered the continuation of the conditions of practice order. It noted that Mr Pierre has had two years to comply with the current order but, despite this, he has provided no evidence of meeting any of the conditions. Nor has he provided any of the information recommended by the previous panel, such as a reflective piece, testimonials or evidence of relevant training. The panel had no evidence of any engagement from Mr Pierre with the NMC at all. In light of this total lack of engagement, the panel concluded that a conditions of practice order was no longer a workable or appropriate sanction.

The panel therefore moved on to consider a suspension order. It considered that a suspension order would protect the public for the time it was in force, and serve the public interest by sending a message to the public and profession about the obligation on all registered nurses to engage with their regulator.

The panel also considered whether it would be appropriate to impose a striking-off order in Mr Pierre's case. It noted that nurses have a responsibility to engage with their regulator and take steps to remediate their practice. Mr Pierre has failed to engage with the NMC for two years and has provided no evidence of compliance with the conditions of practice order, nor any other steps he has taken to improve his record keeping. However, the panel also bore in mind that

there was a public interest in keeping good nurses on the register and facilitating their return to safe unrestricted practice. It noted that Mr Pierre's misconduct was limited to an isolated area of his practice and was, in the view of this panel, easily capable of remediation should Mr Pierre choose to do so. It was also mindful of its duty to act with proportionality, and impose the least restrictive sanction which would adequately protect the public. In these circumstances, the panel considered it would be disproportionate to strike Mr Pierre from the register at this stage. However, the panel wished to make it clear to Mr Pierre that, if he does not take this opportunity to reengage with the NMC and demonstrate that he is willing to remediate his practice, a future reviewing panel may decide that his lack of engagement is fundamentally incompatible with ongoing registration, and decide that striking-off order is an appropriate and proportionate sanction.

The panel therefore decided to impose a suspension order. The length of this order is six months, to allow Mr Pierre an opportunity to reengage with the NMC and demonstrate a commitment to remediating his practice.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 11 April 2019, in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.

Decision on current fitness to practise:

The panel today has considered carefully whether Mr Pierre'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, including the decisions and reasons of previous panels. It took account of the submissions made by Ms Alabaster on behalf of the NMC.

Ms Alabaster outlined the background of the case. She submitted that there has been no change in circumstances and Mr Pierre has continued to fail to engage in the NMC proceedings. She submitted that, in the absence of any further information from Mr Pierre regarding his insight and remediation, his fitness to practise remains impaired. She submitted that a suspension order is no longer proportionate, due to Mr Pierre's lack of engagement. She submitted that Mr Pierre has been given multiple opportunities to remediate his failings and show insight by previous panels. Ms Alabaster referred the panel to the previous panel's determination in which it stated that "... the panel wished to make clear to Mr Pierre that, if he does not take this opportunity to reengage with the NMC and demonstrate that he is willing to remediate his practice, a future reviewing panel may decide that his lack of engagement is fundamentally incompatible with ongoing registration, and decide that a striking-off order is an appropriate and proportionate sanction". She therefore submitted that the previous panels have clearly explained within their reasons that engagement is invaluable within these proceedings to demonstrate Mr Pierre's reflection on his past misconduct and to move forward. Ms Alabaster submitted that the panel has no information before it indicating that Mr Pierre has complied with any of the recommendations made by the substantive hearing. She submitted that Mr Pierre has not expressed a willingness to address the concerns identified in his practice. Ms Alabaster submitted that in the absence of any insight or remediation, the risk of repetition of the behaviour found proved remains. She therefore submitted that Mr Pierre's fitness to practise remains impaired on both public protection and public interest grounds. Accordingly, she invited the panel to consider a striking off order to be the most appropriate and proportionate sanction in this case and to bring this matter to a final conclusion.

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 the charges found proved are serious and relate to the fundamental skills expected of a registered nurse.

The panel noted the previous panel's decision in March 2019 imposing a suspension order in order for Mr Pierre to have a final opportunity to present any evidence as to his current fitness to practise to the hearing. Despite this, today's panel had no evidence before it of any compliance with these recommendations and did not have any evidence of insight, remediation or remorse. In light of these failings, the panel determined that there remains a risk of repetition of the misconduct found proved. The panel was mindful of the persistent lack of engagement by Mr Pierre and his unwillingness to engage with the NMC that demonstrates a disregard for the regulator, suggesting an attitudinal problem.

The panel has borne in mind that its primary function is 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 in the public interest as well as on public protection grounds is justified.

For these reasons, the panel finds that Mr Pierre's fitness to practise remains impaired.

Determination on sanction:

Having found Mr Pierre'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 further action, but concluded that this would be inappropriate in light of the serious risks identified and the persistent lack of engagement by Mr Pierre.

The panel then considered whether to impose a caution order but concluded that it would not address the public protection issue nor be in the public interest to impose a caution order. The misconduct is too serious in this case.

The panel next considered the imposition of a conditions of practice order. The panel was satisfied that the misconduct found proved was potentially remediable. However, the panel determined that in light of his failure to engage with the recommendations made by previous panels, it could not be satisfied that Mr Pierre would comply with a conditions of practice order.

The panel next considered imposing a further suspension order. The panel noted that Mr Pierre has not provided any evidence of remorse for his misconduct nor has he engaged with the NMC throughout his regulatory proceedings. Further, whilst the panel reminded itself that the misconduct found proved was potentially remediable, Mr Pierre has not provided any evidence of remediation or insight into his failings.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. Mr Pierre failed to attend both this and the previous substantive and review hearings and provided no documentary evidence to the NMC on either occasion. He has shown a persistent lack of insight into the seriousness of his misconduct.

The panel has no evidence on which to base any decision to allow him more time to remediate, and the fact that this is the second review of an order, without engagement, lead the panel concluded that there is no merit in further extending the period of suspension. It further notes that Mr Pierre was given a clear forewarning that his engagement is vital to these hearings. However there has been complete lack of engagement. The panel considered that in all the circumstances, fundamental questions arise in relation to Mr Pierre's professionalism, the panel considered that public confidence would not be maintained by a sanction short of striking off. The panel determined that a striking off order is now the proportionate sanction in all the circumstances of this case.

The panel therefore directs the registrar to strike Mr Pierre's name off the register.

In accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 this striking-off order will come into effect upon the expiry of the existing suspension order, namely the end of 11 October 2019.

This decision will be confirmed to Mr Pierre in writing.

That concludes this determination.