

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

**Substantive Order Review Hearing**

**24 October 2019**

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

**Name of registrant:** Heather G Sheffield

**NMC PIN:** 97I2270E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing  
(17 September 2000)

**Area of Registered Address:** England

**Type of Case:** Misconduct

**Panel Members:** Alison Stone (Chair, lay member)  
Faith Thornhill (Registrant member)  
Christina McKenzie (Registrant member)

**Legal Assessor:** James Holdsworth

**Panel Secretary:** Kelly O'Brien

**Registrant:** Not present and not represented

**Nursing and Midwifery Council:** Represented by Rakesh Sharma, Case  
Presenter, NMC Regulatory Legal Team.

**Order being reviewed:** Conditions of Practice Order (6 months)

**Outcome:** **Currently impaired.** Order to lapse upon  
expiry in accordance with Article 30 (1), namely  
the end of 9 November 2019.

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Sheffield 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 Sheffield on 15 October 2019 by recorded delivery and first class post to her registered address. Further, Mr Sharma informed the panel that this was not sent with the required 28 days' notice. However, Mr Sharma referred the panel to a response from Ms Sheffield's representative at the Royal College of Nursing (RCN) on 8 October 2019, which states "*we are happy for this to be listed at the earliest opportunity so will waive notice*".

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 Sheffield. 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 Mr Sharma, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Sharma informed the panel that this hearing was last before a panel on 1 October 2019, on that occasion full and detailed written submissions were made by the RCN but Ms Sheffield did not attend. Mr Sharma submitted that there has been no correspondence to suggest that Ms Sheffield has changed her view. There has been no application for a further adjournment, and there is nothing to suppose that an

adjournment would secure her attendance. Mr Sharma submitted that the current order is due to expire on 9 November 2019, and therefore there is a strong public interest in the hearing taking place without any further delay.

The panel noted the contents of the letter from Ms Sheffield's representatives at the RCN to the NMC dated 30 September 2019 in relation to the adjourned hearing on 1 October 2019. This stated that Ms Sheffield was happy for the hearing to proceed in her absence. The panel considered that notice for today's hearing had been waived, and that there was no indication that Ms Sheffield's position had changed since the letter dated 30 September 2019.

Ms Sheffield had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing and it is of the view that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Ms Sheffield's attendance. Having weighed the interests of Ms Sheffield with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Ms Sheffield's absence.

**Decision and reasons on review of the current order:**

This panel decided to allow the order to lapse upon expiry, namely, at the end of 9 November 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 7 April 2017 for 18 months. On 27 September 2018, the first reviewing panel continued the conditions of practice order for 6 months. On 17 April 2019, the second reviewing panel varied and continued the conditions of practice order for a further 6 months. At the last review on 1 October 2019, the hearing was adjourned in advance of opening so that Ms Sheffield could either make an application for refund of her registration fee (which she appeared inadvertently to have paid) to the Assistant Registrar or clarify her position to her representatives at the RCN. The current order is due to expire on 9 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, whilst employed at Archers Practice;*

- 1. Between 1 October 2010 and 10 September 2013, on one or more occasion as set out in Schedule 1, made errors in the administration and/or documentation of Hepatitis B vaccination.*
- 2. On 2 September 2014, incorrectly vaccinated a three month old child with a Pneumococcal vaccination instead of a Meningitis C vaccination.*
- 3. During September 2014 failed to manage the diabetes of Patient W correctly by failing to take into account the impact of his dementia and the fact that he was still driving.*
- 4. During September 2014 failed to manage the diabetes of Patient F correctly by failing to recognise confusion in the patient.*

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

### **Schedule 1**

*1. 1 October 2010 – Initiated a course of Hepatitis B without establishing if this was appropriate (2 year old patient).*

*2. 13 October 2010 – Initiated a course of Hepatitis B without documenting any travel destination and failed to complete the course for the patient (3 year old patient).*

*3. 22 October 2010 - Initiated a course of Hepatitis B without documenting any travel destination and failed to complete the course for the patient (11 month old patient).*

*4. 11 January 2011 – Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (2 month old patient).*

*5. 12 January 2011 - Initiated a course of Hepatitis B without documenting any travel destination (9 year old patient).*

*6. 12 January 2011 - Initiated a course of Hepatitis B without documenting any travel destination (8 year old patient).*

*7. 28 February 2011 - Initiated a course of Hepatitis B without establishing if this was appropriate (3 month old patient).*

*8. 4 March 2011 - Initiated a course of Hepatitis B failing to document the need for this (3 month old patient).*

9. 1 April 2011 -Initiated a course of Hepatitis B failing to document the need for this (3 month old patient).

10.1 April 2011 - Initiated a course of Hepatitis B without establishing if this was appropriate and failed to complete the course for the patient (4 month old patient).

11.11 July 2011 - Initiated a course of Hepatitis B without documenting any travel destination (3 month old patient).

12.5 August 2011 - Initiated a course of Hepatitis B failing to document the need for this(4 month old patient).

13.6 December 2011 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (14 month old patient).

14.30 March 2012 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (3 month old patient).

15.30 March 2012 - Initiated a course of Hepatitis B without establishing if this was appropriate (3 month old patient).

16.20 April 2012 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (22 month old patient).

17.24 August 2012 - Initiated a course of Hepatitis B without documenting any travel destination and failed to complete the course for the patient (4 year old patient).

18.11 September 2012 - Initiated a course of Hepatitis B without establishing if this was appropriate (2 month old patient).

19.2 October 2012 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (2 month old patient).

*20.1 February 2013 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (3 month old patient).*

*21.13 March 2013 - Initiated a course of Hepatitis B without establishing if this was appropriate and failed to complete the course for the patient (18 month old patient).*

*22.22 March 2013 - Initiated a course of Hepatitis B without documenting any travel destination and failed to complete the course for the patient (3 month old patient).*

*23.22 March 2013 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (3 month old patient).*

*24.10 September 2013 - Initiated a course of Hepatitis B failing to document the need for this and failed to complete the course for the patient (2 month old patient).*

The last reviewing panel determined the following:

*The panel was of the view that it was possible that Ms Sheffield had inadvertently paid her registration fee, therefore causing her registration to be active for reasons other than just her conditions of practice order. The panel reminded itself of the extensive submissions provided by the RCN on Ms Sheffield's behalf to the effect that she did not wish to pay her registration fee and return to nursing.*

*The panel noted that this order is due to expire at the end of 9 November 2019, more than 28 days from the date of this hearing. It also noted that it is within Ms Sheffield's gift to waive proper service of notice of any future hearing.*

*The panel considered that, had Ms Sheffield not paid her fee and her registration be live only due to these proceedings, this panel might have felt it difficult not to accede to the request to allow the order to lapse upon expiry, having made a finding of current impairment.*

*However, this panel stressed that it has, in this hearing, made no finding as to current impairment and does not seek to bind or limit any future panel in its decision-making capacity.*

*The panel concluded that basic principles of fairness and propriety require that this hearing be adjourned, such that Ms Sheffield can either make an application to the Assistant Registrar or clarify her position to her representatives at the RCN.*

*The panel therefore determined to adjourn this hearing.*

*It made the following directions to the NMC:*

- *That Ms Sheffield's representative at the RCN be contacted in relation to this decision and informed that any request for a refund needs to be made either today or tomorrow;*
- *That the Assistant Registrar be contacted and fully apprised of this matter; and*
- *That this hearing be re-listed as soon as practicable.*

## **Decision on current fitness to practise**

The panel has considered carefully whether Ms Sheffield 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 judgement 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 Mr Sharma on behalf of the NMC and those made by the RCN, on Ms Sheffield's behalf, in a letter dated 30 September 2019.

Mr Sharma outlined the background of the case. Mr Sharma informed the panel that Ms Sheffield has indicated that she wishes to be removed from the register. However, it was noted before opening the last hearing that Ms Sheffield's registration had not lapsed as she had paid her registration fee. The last reviewing panel at that time directed that the Ms Sheffield request a refund, in order to allow Ms Sheffield's registration to remain active in consequence only of her being subject to a substantive order.

Mr Sharma invited the panel to find that Ms Sheffield remained impaired. He submitted that there is no evidence of remediation or insight and there has been no material change since the date of the previous review hearings. Mr Sharma invited the panel to consider the NMC guidance on "*Allowing orders to expire when a nurse or midwife's registration will lapse*", when considering sanction. He also referred the panel to the RCN's submissions which referred the panel to the case of *Clarke v General Optical Council [2018] EWCA Civ 1463*.

The panel heard and 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 Sheffield's fitness to practise remains impaired.

In its consideration of whether Ms Sheffield has remedied her practice the panel noted that Ms Sheffield has chosen to pursue an alternative career. It noted that Ms Sheffield has not worked as a registered nurse since prior to the substantive order in 2017. Ms Sheffield is currently working as a teaching assistant and has done so for more than four years. She has also undertaken a course in sports massage. The panel considered that it is clear that Ms Sheffield has chosen to pursue an alternative career. As a result, Ms Sheffield has not complied with her conditions of practice order, or undertaken any remedial work to remediate her original failings.

In these circumstances the panel considered that the risk of repetition of the matters of the kind found proved remains unchanged from when the original substantive order was imposed. The panel therefore decided that a finding of continuing impairment is necessary 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 also required.

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

### **Determination on sanction**

Having found Ms Sheffield 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 had regard to the NMC Guidance on "*Allowing orders to expire when a nurse or midwife's registration will lapse*" which states as follows:

"Taking this option is likely to be appropriate if:

- the nurse or midwife's registration is only active because of the substantive order being in place,
- the nurse or midwife doesn't want to continue practising, and
- the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this

can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.”

The panel considered that each of these three criteria were applicable to this case.

The panel noted that Ms Sheffield’s registration fee was refunded at her request, and her registration is now only active because of the substantive order.

The panel had regard to the undertaking from Ms Sheffield dated 30 September 2019 that she does not intend to practise as a registered nurse, and will not submit an application for re-admission to the UK register of nurses and midwives. The panel also had regard to the letter correspondence from the RCN to the NMC dated 30 September 2019 which refers the panel to the case of *Clarke v General Optical Council [2018] EWCA Civ 1463*.

The panel considered that Ms Sheffield has not worked as a registered nurse since prior to the substantive order in 2017. Ms Sheffield is currently working as a teaching assistant and has undertaken a course in sports massage. The panel considered that it was clear that Ms Sheffield has chosen to pursue an alternative career. In these circumstances the panel found that Ms Sheffield had expressed her clear and well-founded view that she does not intend to resume her career as a nurse.

The panel noted its previous finding that Ms Sheffield practise is currently impaired. In these circumstances the panel determined that the most proportionate and appropriate action is to allow the order to lapse upon expiry, namely 9 November 2019. The panel noted that the public would remain protected by its finding of impairment, and this would be noted by the Registrar if Ms Sheffield applied to be re-admitted to the register.

The panel went on to consider the alternative sanctions available to it.

The panel considered that a caution order would be inappropriate in view of the risk of repetition identified in this case. The panel considered imposing a conditions of practice order but deemed this inappropriate as Ms Sheffield has said that she no longer wants to be a nurse and therefore is very unlikely to engage with conditions.

The panel considered the imposition of a further conditions of practice order. The panel considered that whilst this would protect the public it would serve no useful purpose as Ms Sheffield has no intention to continue practising as a nurse. The panel finally considered the imposition of a suspension order or a striking-off order. However it determined that these orders would be wholly disproportionate in these circumstances. It noted that Ms Sheffield can leave the register upon the present order lapsing and the public would still be protected by the panel's finding of impairment.

This decision will be confirmed to Ms Sheffield in writing.

That concludes this determination.