

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

**Substantive Order Review Meeting**

**29 April 2020**

**[Virtual Meeting]**

<b>Name of registrant:</b>	Mr Brian Thomson
<b>NMC PIN:</b>	87B0511S
<b>Part(s) of the register:</b>	Registered Nurse – sub part 1 Adult Nursing (21 May 1990)
<b>Area of Registered Address:</b>	Scotland
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	David Boden (Chair, lay member) Stella Armstrong (Registrant member) Tim Skelton (Lay member)
<b>Legal Assessor:</b>	Charles Apthorp
<b>Panel Secretary:</b>	Catherine Acevedo
<b>Order being reviewed:</b>	Suspension Order (4 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-off order to come into effect at the end of 7 June 2020 in accordance with Article 30 (1)

### **Decision on Service of Notice of Meeting:**

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004*, as amended state:

*'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.*

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—  
(a) ordinary post'*

The letter of notice of this substantive meeting was sent to Mr Thomson address on the register on 28 February 2020. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that there has been no response from Mr Thomson in relation to the notice of this meeting.

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

The panel decided to impose a striking-off order. This order will come into effect at the end of 7 June 2020 in accordance with Article 30 (1) 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 9 January 2020 for 4 months. The current order is due to expire on 7 June 2020.

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:*

*At Finavon Court Care Home:*

- 1. On 19 June 2018 you left the treatment room door open on two separate occasions.*
- 2. On 19 June 2018 you pre-potted medication for multiple residents and then administered the medication without the Medicines Administration Record charts.*
- 3. On 19 and/or 20 June 2018 you signed all the Medicines Administration Record charts at once for residents you had earlier administered medication to.*

*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 considered that limbs a, b and c of Dame Janet Smith’s test, as set out above, were engaged by Mr Thomson’s past actions and omissions. The panel considered that patients were placed at risk of harm by Mr Thomson’s poor practice in medicines administration and record keeping. The panel considered that members of the public would expect nurses to safely administer medication to patients and to maintain appropriate records, and therefore was of the view that his actions and omissions brought the profession into disrepute. The panel also considered that Mr Thomson breached fundamental tenets of the profession, with his failings relating to basic and fundamental areas of nursing practice.*

*The panel went on to consider whether Mr Thomson remained liable to act in a way which could put patients at risk of harm, bring the profession into disrepute or breach fundamental tenets of the profession in the future. In doing so, the panel assessed whether there was any evidence of remorse, insight and remediation.*

*The panel recognised that Mr Thomson had admitted most of the allegations during the investigation meeting held at the Home on 20 June 2018. He had also accepted the regulatory concerns in his response form dated 24 February 2019. However, the panel considered that Mr Thomson had not demonstrated any evidence of insight. During the investigation conducted by the Home, whilst accepting that he had pre-potted medication and administered this to residents, and that he had signed MAR charts all at once, he said he knew this was wrong, but that this was the way he had always done things. Mr Thomson did not appear to recognise the potential harm that could have been caused to patients as a result of what appeared to be his common practice. Furthermore, whilst, during the investigation meeting, Mr Thomson apologised for his actions, he did not appear to demonstrate any genuine remorse for them.*

*In considering whether there was any evidence of remediation, the panel noted that within his regulatory response form, Mr Thomson stated that he did not wish to practise as a nurse anymore, and that he was not currently working. There was no evidence to suggest that Mr Thomson had worked as a nurse since June 2018 and that he had been able to demonstrate a period of safe and effective practice without further concern. Furthermore, there was no evidence of any other training or remedial steps taken to address the concerns highlighted with his practice.*

*In light of the lack of sufficient evidence of remorse, insight and remediation, the panel considered that a risk of repetition remains. It considered that Mr Thomson remained liable to act in a way which could put patients at risk of harm, bring the profession into disrepute or breach fundamental tenets of the profession in the*

*future. The panel therefore determined that a finding of impairment is necessary on the grounds 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that patients, families and members of the public place trust in nurses to safely administer medication and to uphold good standards of record keeping. The panel considered that in light of Mr Thomson's actions and omissions, public confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.*

*Having regard to all of the above, the panel was satisfied that Mr Thomson's fitness to practise is currently impaired".*

The original 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 identified. Taking no action would not restrict Mr Thomson's practice. The panel decided that taking no action would not protect the public and it would not satisfy the wider public interest.*

*The panel next considered 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 Fitness to Practise Committee wishes to mark that the behaviour was unacceptable and must not happen again.”*

*The panel considered that Mr Thomson’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the risk of repetition identified. A caution order would not restrict Mr Thomson’s practice. The panel decided that imposing a caution order would not protect the public and it would not satisfy the wider public interest.*

*The panel then considered whether to impose a conditions of practice order. The panel considered that there were identifiable areas of Mr Thomson’s practice which were in need of assessment and retraining. In theory it could devise conditions of practice to address these areas, which would protect the public and uphold the public interest. However, Mr Thomson has indicated that he no longer wishes to practise as a nurse and, aside from returning the regulatory response form, has not engaged with these proceedings. Mr Thomson has not shown a willingness to respond positively to retraining and there was no evidence to suggest that he would be able or willing to comply with conditions of practice. The panel therefore concluded that it would not be possible to formulate practicable or workable conditions of practice in this case.*

*The panel next considered whether to impose a suspension order. The panel considered that a suspension order would protect the public and mark the wider public interest. The panel noted that the charges appear to relate to a single instance of misconduct, where a lesser sanction had been determined insufficient. There was no evidence of harmful deep-seated personality or attitudinal problems on Mr Thomson’s part nor any evidence of a repetition of these actions and omissions since June 2018.*

*The panel went on to consider whether to impose a striking-off order. The panel considered that Mr Thomson’s actions and omissions are remediable, and that they were not at the upper end of the spectrum of seriousness and therefore not*

*fundamentally incompatible with his remaining on the register. The panel did not consider that a striking-off order was the only sanction which would protect the public and uphold the public interest and therefore concluded that this sanction would be disproportionate.*

*The panel therefore determined that a suspension order is appropriate and proportionate in the circumstances of this case.*

*The panel considered that a period of suspension would provide adequate opportunity for Mr Thomson to engage with these proceedings, to reflect on his actions and omissions and to demonstrate reflection and evidence of insight. The panel noted that Mr Thomson has indicated that he does not intend to continue practising as a nurse. Nonetheless it considered that this period of suspension would enable Mr Thomson to reflect on this, and if his intention remains the same, to provide a clear statement of his future plans to a reviewing panel. The panel determined that a suspension order for four months would provide Mr Thomson with sufficient opportunity to take such measures, whilst sufficiently protecting the public and marking the public interest.*

*At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, allow the order to lapse on expiry, extend the order or replace the order with another order.*

*A future reviewing panel may be assisted by evidence of the following:*

*If Mr Thomson wishes to continue practising as a nurse:*

- A reflective piece demonstrating insight into his actions and omissions;*
- Any continuing professional development and other steps taken to keep his clinical skills and knowledge up to date.*

*If Mr Thomson still does not intend to practise as a nurse in the future:*

- A clear statement regarding his future intentions to this effect”.*

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

The panel has considered carefully whether Mr Thomson'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.

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 Mr Thomson's fitness to practise remains impaired. Regarding Mr Thomson's insight, the panel noted that the last panel suggested that a future reviewing panel would be assisted by a reflective statement and evidence of any continuing professional development. The panel at this hearing has received no new information or evidence of any of the suggestions made by the previous panel. The panel also noted that there was no evidence provided at this meeting of any remediation or a clear statement regarding Mr Thomson's future intentions if he does not intend to practice as a nurse. In light of this, the panel determined that there remained a risk of repetition of the matters found proved. 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 Mr Thomson's fitness to practise remains impaired.

### **Determination on sanction**

Having found Mr Thomson'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 Indicative Sanctions Guidance (ISG) 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.

The panel then considered whether to impose a caution 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 impose a caution order.

The panel then considered whether to impose a conditions of practice order. The panel considered that there were identifiable areas of Mr Thomson's practice which were in need of assessment and retraining. In theory it could devise conditions of practice to address these areas, which would protect the public and uphold the public interest. However, Mr Thomson has indicated that he no longer wishes to practise as a nurse and, aside from returning the regulatory response form, has not engaged with these proceedings. Mr Thomson has not shown a willingness to respond positively to retraining and there was no evidence to suggest that he would be able or willing to comply with conditions of practice. The panel therefore concluded that it would not be possible to formulate practicable or workable conditions of practice in this case.

The panel next considered imposing a further suspension order. The panel noted that Mr Thomson has been provided the opportunity to demonstrate that he has reflected

and developed insight into his misconduct. The panel also noted that Mr Thomson's failure to provide further evidence demonstrated a 'persistent lack of insight into his actions'. Mr Thomson has the responsibility to engage with his regulator and has chosen not to. The panel took into account that there had been no change since the substantive hearing to suggest that he is willing to engage in the future. The panel also took into account that Mr Thomson had not indicated, despite the previous panels request, whether he intended to practice or not. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr Thomson 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.

This decision will be confirmed to Mr Thomson in writing.

That concludes this determination.