

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

**Substantive Order Review Hearing
04 August 2020**

[Virtual hearing]

Name of registrant: Pamela Jane Burton

NMC PIN: 68Y0103S

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing – November 1972

Registered Midwife – May 1975

Area of Registered Address: Edinburgh

Type of Case: Lack of Competence

Panel members: Anne Asher (Chair, Registrant member)
Jennifer Portway (Lay member)
Alexandra Hawkins-Drew (Registrant member)

Legal Assessor: Karen Rea

Panel Secretary: Roshani Wanigasinghe

Nursing and Midwifery Council: Represented by Yusuf Segovia, Case Presenter

Ms Burton: Not present and not represented in her absence

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into immediate effect in accordance with Article 30(2) and 30 (4)**

Service of notice of hearing

This reviewing panel was informed at the start of this hearing that Ms Burton was not in attendance and that the notice of hearing had been sent to Ms Burton by recorded delivery and first class post on 19 June 2020.

The panel noted that under the recent amendments made to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (“the Rules”) during the Covid-19 emergency period, a notice of hearing may be sent to a registrant’s registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel took into account that the notice of hearing provided details of the substantive order being reviewed, including the time and date of the hearing and the video conferencing details required to join the hearing. It also included information about Ms Burton’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in his absence.

Mr Segovia, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Rules and invited the panel to find that there had been good service.

The panel heard and accepted the advice of the legal assessor.

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

Decision and reasons on proceeding in the absence of Ms Burton

The panel next considered whether it should proceed in the absence of Ms Burton. It had regard to Rule 32 and heard the submissions of Mr Segovia who invited the panel to continue in the absence of Ms Burton. Mr Segovia drew the panel’s attention to a telephone note dated 3 August 2020 between Ms Burton and the NMC, in which it states:

“...The registrant confirmed that she will not be attending as she does not want to attend via telephone/gotomeeting ...’

Mr Segovia submitted that it is clear from the telephone note that she is aware of today’s hearing and does not wish to participate at the review hearing. In the light of this he submitted that it appears that Ms Burton has voluntarily absented herself.

The panel heard and accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Ms Burton. In reaching this decision, it considered the submissions of Mr Segovia and the advice of the legal assessor. It had particular regard to the relevant case law and to the overall interests of justice and fairness to the parties, including proceeding with the utmost care and caution. It noted that:

- Ms Burton had not made an application for an adjournment;
- There is no reason to suppose that adjourning would secure Ms Burton’s attendance at some future date;
- Ms Burton has informed the NMC that she has received the Notice of Hearing and confirmed she did not wish to attend; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that Ms Burton had decided of her own volition not to attend the hearing and that it is fair, appropriate and proportionate to proceed in the absence of Ms Burton.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect immediately in accordance with Article 30(2) and 30(4) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the second review of a substantive suspension order, originally imposed by a Fitness to Practise Committee panel on 26 January 2018 for 12 months. The first

reviewing panel on 29 October 2019 decided to impose a further suspension order for a period of 9 months.

The current order is due to expire at the end of 10 September 2020.

The panel is reviewing the order pursuant to Article 30(2) of the Order.

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

“That you a Registered Nurse employed through the NHS Lothian Bank Staff between 3 December 2004 and 27 October 2016,

- 1. While undertaking a placement on Ward 201 at Edinburgh Royal Infirmary between 1 February 2016 and 31 March 2016 failed to demonstrate the standards of knowledge, skill, and judgment required to safely practise as a qualified Band 5 Staff Nurse*

- 2. While undertaking a placement on Charles Bell Ward at Astley Ainsley Hospital between 1 May and 31 August 2016:*
 - 2.1. failed to demonstrate awareness of personal and professional accountability in practice/recognise her limitations*

 - 2.2. could not demonstrate safe manual handling techniques*

 - 2.3. failed to demonstrate knowledge of factors that may lead to deterioration in a patient’s condition and/or use recognised frameworks to assess patients and/or relay information to the nurse in charge/medical staff*

 - 2.4. failed to have overall awareness of potential risks in the ward area*

 - 2.5....*

2.6. failed to ensure her clinical competences were up to date

2.7. could not demonstrate safe medication administration skills.

And, in light of the above, your fitness to practise is impaired by reason of your lack of competence.”

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

“The panel considered whether your fitness to practise remains impaired.

The panel have been greatly assisted by your attendance at today’s hearing. Whilst the previous panel determined that you had demonstrated a lack of insight, today’s panel determined that you have demonstrated the beginnings of insight, and the potential for developing it. The panel were encouraged by your oral evidence in which you accepted that there are certain aspects of your practise which may need improving. However, the panel noted that throughout this hearing you continue to disagree with the findings of the substantive panel and the suspension order imposed. Further, whilst you demonstrated an understanding of what is meant by the term ‘reflection’, you told the panel that ‘I don’t think I did a reflective statement’. Therefore, the panel determined that you have not yet fully reflected upon your failings and/or demonstrated an appreciation of the charges found proved and how they could have potentially impacted on patients.

In its consideration of whether you have remediated your practice, the panel noted that, other than attending today’s hearing, you have not engaged with the suggestions made by the previous panel as to what this panel would be assisted by today. This included evidence of any relevant training, a reflective piece and/or any professional references. Whilst the panel appreciates that the suggestions made by the substantive panel were not ‘conditions’, it determined that it would have been greatly assisted by some evidence of compliance with those suggestions. The panel had no other evidence before it to suggest you have begun remediating the concerns found proved in relation to your competency. In light of this the panel determined that you remain liable to repeat matters of the kind 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 your fitness to practise remains impaired.”

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

“The panel first considered revoking the current order or imposing a caution order. It concluded that neither order would be appropriate in view of the risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to revoke the current order or to impose a caution order.

The panel considered substituting the current suspension order with a conditions of practice order. However, the panel determined that there were no workable conditions which could be formulated that would sufficiently protect the public and address the public interest concerns in your case. Further, given the lack of insight into the effect your actions had on patients and the potential risk of harm, the panel could not be satisfied that such an order would be appropriate at this time.

The panel was of the view that a further suspension order would be an appropriate and proportionate response. A period of nine months would allow you a further opportunity to reflect on how the matters found proved could have potentially impacted upon patients, colleagues and the reputation of the profession, including the risk of harm. Further, this period will allow you sufficient time to develop your insight, undertake any relevant training which address the concerns found proved and continue your engagement with the NMC as your regulator. The panel considered that it would be disproportionate to impose a suspension order for the

full period available of 12 months given the evidence for the potential of developing insight and your attendance at today's hearing.

The panel determined that a suspension order would protect the public and satisfy the public interest concerns in your case. The panel noted that such an order would not prevent you from working in a role which does not require your registration e.g. as a Health Care Assistant.

A striking off order was not a sanction available to the panel at this time.

This suspension order will be reviewed by a panel of the Fitness to Practise Committee shortly before its expiry. At a review hearing the panel may revoke the order, it may confirm the order, or it may replace the order with another order.

The reviewing panel may be assisted by:

- A reflective piece setting out your understanding of the impact and potential risk of harm the charges found proved at the substantive hearing could have had on patients, patient's families, the public and the nursing profession;*
- Evidence of any relevant training or educational resources you have consulted in relation to your current nursing practise, either paid for or free;*
- Relevant up to date reference/s relating to any employment paid or unpaid, or any voluntary work"*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Burton'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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle which contained the decisions and reasons of the previous panels. It also had regard to the responses from Ms Burton and it has taken account of the submissions made by Mr Segovia on behalf of the NMC.

Mr Segovia informed the panel of the background to this case. He submitted that Ms Burton has expressed her intention not to practice as a nurse on a number of hand written letters. Mr Segovia submitted that the hand written letters are difficult to read, however that there is a legible letter dated in July 2020, which was scanned into the NMC system on 30 July 2020 which states "I wont be returning to nursing again". Mr Segovia submitted that there is no evidence to demonstrate that Ms Burton has addressed the concerns identified by the substantive panel. He submitted that the charges found proved at the substantive hearing are serious and, as the panel has received no new information from Ms Burton regarding her insight, remorse or remediation, there is nothing to indicate that she has addressed the concerns identified by previous panels. Mr Segovia submitted that Ms Burton's fitness to practise remains impaired on both public protection and public interest grounds.

Mr Segovia submitted that the issue of sanction is a matter of professional judgement for the panel. He submitted that, given Ms Burton's intention not to return to practice, the panel may consider that a further period of suspension would serve no useful purpose. He submitted that it is a matter for the panel as to what sanction is appropriate, but that it may consider it appropriate to allow the order to lapse, given Ms Burton's indication of wishing to not return to practice. Mr Segovia submitted that since Ms Burton has been suspended for a period over two years, the option to strike off is available to the panel, however this is more appropriate when a registrant has not engaged.

During Mr Segovia's submissions, the panel raised questions about the gap in the time between the substantive hearing in 2018 and the previous review hearing in 2019. The panel was informed that there had been an appeal by Ms Burton in the interim and this was therefore the reason for the gap in the timeline. The panel was satisfied that these dates matched and tied in with the information 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 Ms Burton's fitness to practise remains impaired.

The panel noted that the substantive panel found that Ms Burton's insight was 'developing' but that she had not provided evidence of any steps she had taken to remediate her clinical failings. This panel considered that there was no new material information before it, and therefore there had been no real material change of circumstances since the previous review hearing. The panel noted that Ms Burton had consistently in a number of letters indicated that she wished to not practice as a nurse.

The panel had regard to a typed letter dated 28 April 2020 in which Ms Burton states "The reason the NMC gives is that I am incompetent but I am not and will have nobody tell me that Either (sic)". The panel noted that throughout these proceedings Ms Burton continued to disagree with the findings of the substantive panel and the suspension order imposed. The panel noted that the previous reviewing panel, in its determination on 29 October 2019, had been very clear as to what this panel would be assisted by, in order for Ms Burton to demonstrate evidence of insight and remediation. Despite being given such clear information by the previous reviewing panel, Ms Burton had not meaningfully engaged with these suggestions, and she had not taken up that opportunity. The panel considered that Ms Burton had not provided the evidence requested by the previous panel except for an attempt at a reflective piece. However, the panel determined that within this reflective piece, she has not fully reflected upon her failings and/or demonstrated an appreciation of the charges found proved and how they could have potentially impacted on patients. To the contrary, the panel noted that she continued to place blame on others which was indicated by the contents within another typed undated letter, which stated "I wont attend anymore hearings in George street nor will I be taking another appeal to court the last appeal was unfair and the NMC did all they could to bring me down...all I can say is people get paid back for badly treating someone and I was badly treated." The panel therefore considered that Ms Burton had not provided any meaningful evidence requested by the previous panel.

The panel considered this case to be at the top end of a continuing lack of competence in areas of practice that encompass basic nursing care. This was evidenced by the many breaches of the Code as identified by the substantive panel. In the panel's judgement, Ms Burton displayed a wide ranging failure in the fundamental competencies of a nurse at the time that the events took place.

Since then, she has failed to demonstrate any remediation, despite encouragement and suggestions during this Fitness to Practise process. The panel has serious concerns about the level of Ms Burton's lack of competence that has not been addressed at all and that has little prospect of being addressed in light of Ms Burton's intransigent approach to her case throughout the process, as evidenced by her many hand-written letters of communication with the NMC.

The panel therefore considered that there was no information before it to demonstrate that Ms Burton had addressed her clinical failings and that she had remediated her lack of competence. The panel also considered that there was no evidence to show the development of any insight on Ms Burton's part. The panel had nothing before it to provide reassurance that Ms Burton would not repeat her clinical failings in the future. The panel therefore considered that there is a high risk of repetition, and that patients would be placed at a real risk of harm if Ms Burton were able to practise without restriction. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 had regard to Ms Burton's lack of meaningful acceptance to her failures and lack of insight or remediation, despite being given clear guidance as to how she could provide this panel with evidence to demonstrate remediation and insight. The panel considered that Ms Burton has also demonstrated a deep-seated attitudinal issue through her responses to the charges, as evidenced by her previous multiple correspondence to the NMC. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

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

Determination on sanction

Having found Ms Burton'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 30 of the Order. The panel also accepted the Legal Assessor's advice. The panel also took into account the NMC's Sanctions Guidance ("SG") 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. Taking no action would not restrict Ms Burton's practice. Furthermore, permitting her to return to practice, which she could do, as she has referred to undergoing a "study course" and she had appealed the substantive order in 2018, by allowing the existing order to lapse, would pose a high risk to the health, safety and well being of the public and severely undermine the wider public interest. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

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. Imposing a caution order would also not restrict Ms Burton's practice. Furthermore, with a Caution Order in place, permitting her to return to practice, which she could do, as she has referred to undergoing a "study course" and she had appealed the substantive order in 2018, by allowing the existing order to lapse, would pose a high risk to the health, safety and well being of the public and severely undermine the wider public interest. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that Ms Burton had previously been subject to an extensive capability process at her former employment. The panel also took into consideration that Ms Burton had been unable to demonstrate any improvement in her practice, take advice or learn from the local capability supervision and support with which she had been provided. Hence, the panel concluded that there would be no advantage to impose another form of monitoring,

namely, a Conditions of Practice Order, which may not be as stringent as the former capability process, and, therefore, less likely to remove the deep seated, wide ranging and basic deficiencies identified by this case. The panel noted Ms Burton's consistent denial to take full responsibility for her actions. It concluded that there was no evidence to suggest that Ms Burton would be willing or able to comply with a conditions of practice order. The panel determined that it would not be possible to formulate workable or practicable conditions, which would suitably protect the public and satisfy the public interest considering her attitude towards her practice.

The panel next considered whether to impose a further suspension order. The panel noted that Ms Burton had been the subject of two suspension orders. During that time, there was no evidence to suggest that Ms Burton had developed any further insight, that she had done anything to remediate her clinical failings, and that she was any closer to being able to return to safe and effective practice. The panel considered that previous panels had clearly given Ms Burton information about what she would need to do in order to satisfy future panels that she was safe to return to practice, which she had not done meaningfully. Ms Burton has not provided any evidence to demonstrate that she had mitigated any risks associated with her practice, and to demonstrate that she was capable of safe and effective practice. The panel considered that the risk of Ms Burton repeating her clinical failings was high, and that, in the circumstances, a further suspension order would serve no useful purpose. It concluded that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel determined that it would not be in the public interest for a further suspension order to be imposed in circumstances where there was no evidence to suggest that this would facilitate her return to safe and effective practice. The panel noted that this was the second review of a substantive order, originally imposed on Ms Burton's registration in 2018. Despite the number of opportunities given to Ms Burton to demonstrate evidence of insight and remediation, she had failed to engage with these opportunities. The panel considered that this raised fundamental questions about Ms Burton's willingness and ability to remediate her clinical failings. The panel considered that in light of this, Ms Burton's position was fundamentally incompatible with being a registered nurse. It considered that a striking-off order was now the only sanction which would be sufficient to protect patients and members of the public and to maintain proper professional standards. The panel determined that public confidence in the nursing profession and in the NMC as

a regulator would be undermined if Ms Burton were not permanently removed from the register. The panel concluded that a striking-off order is the only appropriate and proportionate sanction in the circumstances of this case.

In accordance with Article 30(2) and 30(4) of the Order, this striking-off order will come into effect immediately. In the panel's judgement, as set out in the section above dealing with the option of an extension to the existing Suspension Order, nothing can be gained by delaying the imposition of the Striking Off Order, in light of Ms Burton's intransigence, her total lack of insight and the commensurate risk of repetition that the panel has concluded are the clearest characteristics of Ms Burton's case.

This decision will be confirmed to Ms Burton in writing.

That concludes this determination