

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

**Substantive Order Review Meeting
4 February 2020**

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

Name of registrant: Ross Robert Lockhart

NMC PIN: 00J0053S

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nursing – October 2003

Area of registered address: Scotland

Type of case: Misconduct

Panel members: Nicola Jackson (Chair, lay member)
Bernard Herdan (Lay member)
Shane Moody (Registrant member)

Legal Assessor: Nigel Mitchell

Panel Secretary: Melissa McLean

Order being reviewed: Conditions of practice order

Fitness to Practise: Impaired

Outcome: Striking-off order to come into effect
immediately in accordance with Article 30 (2)

Decision and reasons 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 [Fitness to Practise] 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 panel accepted the advice of the legal assessor.

It noted that the letter of notice of this substantive meeting was sent to Mr Lockhart's registered address by both first class post and recorded delivery on 9 December 2019. Royal Mail "Track and Trace" also confirms that notice was delivered and signed for at Mr Lockhart's registered address on 11 December 2019.

The notice informed Mr Lockhart that his suspension order would be reviewed at a meeting on or after 3 February 2020, unless he asked for the review to take place at a hearing.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting.

Decision and reasons on review of the current order

The panel decided to make a striking-off order. This order will come into effect immediately in accordance with Article 30(2) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of the substantive order.

A suspension order was originally imposed by a Fitness to Practise panel on 18 August 2017 for a period of six months. A further suspension order was imposed on 29 January 2018 for a further six months. On 20 August 2018 the order was reviewed and the panel imposed a conditions of practice order for 12 months. On 7 August 2019 the order was reviewed and the panel extended the conditions of practice order for 6 months. This current order is due to expire on 20 March 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, while employed as staff nurse at St Margaret's Care Home, Edinburgh:

1. *On 3 July 2016, following Resident B suffering a fall:*
 - 1.1 *Did not press the emergency buzzer;*
 - 1.2 *Did not adequately check Resident B for signs of a fracture;*
 - 1.3 *Did not perform and/ or record a set of neurological observations;*
 - 1.4 *Inappropriately took hold of Resident B's ankles and moved her legs from side to side;*
 - 1.5 *Moved Resident B when it was not clinically justified;*
 - 1.6 *Failed to correctly assess and/ or escalate Resident B's condition;*
 - 1.7 *Incorrectly recorded that it was a witnessed fall.*

2. *When informed on one or more occasions that Resident B was in pain and/ or had sustained visible shortening of the leg and/ or required an ambulance:*
 - 2.1 *Did not perform a set of observations;*
 - 2.2 *Did not escalate the care of Resident B.*

3. *Did not ensure that Resident B was escorted to hospital by a member of staff.*

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

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

Regarding Mr Lockhart's insight, the panel noted that the last panel concluded that Mr Lockhart had early developing insight and a current desire to remedy his failings. Today's panel has no new information before it to determine whether Mr Lockhart's insight has developed in the last 12 months or whether he has taken any steps to remedy his practice.

The last panel determined that Mr Lockhart was liable to repeat matters of the kind found proved. This panel has received no information to determine that there is no longer a risk of repetition of these failings. In light of this the panel determined that Mr Lockhart remains liable to repeat conduct 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 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 has 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 Lockhart's fitness to practise remains impaired.

The third reviewing 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 and seriousness of the charges found proved. 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 be inappropriate in view of the risk of repetition identified and seriousness of the charges found proved. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice order remains the appropriate order in this case. The panel was of the view that a conditions of practice order is sufficient to protect patients during the period they are in force and would adequately protect the public.

However, the panel had noted that Mr Lockhart has not fully engaged with these proceedings despite the clear advice of the previous panel. The panel had careful regard as to whether it was in the public interest continually to subject a nurse to a substantive order with no evidence of progress and no engagement with the regulatory proceedings. The panel seriously considered the imposition of a suspension or a striking off order. The panel was of the view that another period of suspension would serve no useful purpose.

The panel was of the view that, on this occasion, Mr Lockhart should be afforded one final opportunity to demonstrate meaningful engagement with these proceedings.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of six months, which will come into effect on the expiry of the current order. The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

- 1. You must restrict your nursing practice to an NHS Trust or Board.*

2. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:*
 - a) *Working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is physically present in or on the same ward, unit or floor that you are working in or on.*
3. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:*
 - a. *Dealing with emergency situations*
 - b. *assessment of patients;*
 - c. *communicating with colleagues; and*
 - d. *recordkeeping relating to emergency situations*
4. *You must complete a weekly diary reflecting on any significant incidents and experiences you have encountered.*
5. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every 4 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
6. *You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment.*
7. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.*

8. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
9. *You must undertake training relating to moving and handling, injury assessment, patient observations and management in emergency situations and associated record keeping.*
10. *You must provide a reflective statement setting out your understanding of the purpose and significance of this conditions of practice order and its impact on your future practice.*
11. *You must notify the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer;*
12. *You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them;*
13. *You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study;*
14. *You must immediately inform the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (13) above, to them:*

- a. *Any organisation or person employing, contracting with, or using you to undertake nursing work;*
- b. *Any agency you are registered with or apply to be registered with (at the time of application);*
- c. *Any prospective employer (at the time of application) where you are applying for any nursing appointment; and*
- d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Lockhart'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 judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the decisions and reasons of previous panels.

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 Lockhart's fitness to practise remains impaired.

Regarding insight, the last reviewing panel noted that there was no new information before it to determine whether Mr Lockhart had developed any insight into his errors. There has been no engagement at all from Mr Lockhart since the last review. This panel therefore had no new information and determined that Mr Lockhart has not made any

attempts to remedy his practice. The panel noted that the charges found proved against Mr Lockhart were serious and was of the view that his misconduct had put patients at risk of serious harm.

The panel noted that although there had been some engagement from Mr Lockhart during the hearing in August 2018, this panel noted that it had not seen any documentation to evidence that Mr Lockhart has provided any compliance with the current conditions of practice.

The last reviewing panel determined that Mr Lockhart was liable to repeat matters of the kind found proved. Today's panel has not received any new information to determine that there is no longer a risk of repetition. In light of this, the panel determined that Mr Lockhart remains 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 Mr Lockhart's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Lockhart'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 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 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 in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Lockhart's practice would not be appropriate in the circumstances. The SG 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 Mr Lockhart's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mr Lockhart's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that Mr Lockhart has been given 18 months to comply with workable conditions and has failed to provide any evidence that he has done so.

The panel next considered imposing a suspension order. The panel noted that Mr Lockhart has not provided evidence of remorse for his misconduct and nor has he taken any remedial steps to demonstrate further insight into his failings. Nor has he complied with any of the suggestions made by the previous panel to assist the current meeting. Despite Mr Lockhart's suspension order being replaced with conditions of practice in August 2018 there has been no tangible evidence from him of any attempts to mitigate his misconduct or develop any insight. The panel noted that it was not bound by the previous reviewing panels' decision, but it determined that Mr Lockhart was given "one last chance" by the previous panel in August 2019 to remediate his practice. In these circumstances the panel determined that a period of suspension would not serve any useful purpose. The panel found that it was necessary to take action to prevent Mr Lockhart 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.

The panel therefore directs the registrar to strike Mr Lockhart's name off the register. This striking-off order will replace the current conditions of practice order with immediate effect in accordance with Article 30(2).

This will be confirmed to Mr Lockhart in writing.

That concludes this determination.