

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

31 July 2020

Nursing and Midwifery Council
Virtual Hearing

Name of Registrant Nurse: Paul Norman

NMC PIN: 0310330W

Part of the register: Registered Nurse (Sub Part 1)
Adult Nursing – September 2006

Area of Registered Address: Wales

Type of Case: Misconduct

Panel Members: Raymond Marley (Chair, Lay member)
Sarah Furniss (Registrant member)
Razia Karim (Lay member)

Legal Assessor: Nina Ellin

Panel Secretary: Aoife Kennedy

Order being reviewed: Suspension order (6 months)

Fitness to Practise: Impaired

Outcome: Striking-off order to come into effect at the
end of 7 September 2020 in accordance
with Article 30(1)

Decision and reasons on application under Rule 19

Mr Benzynie informed the panel that matters relating to Mr Norman's health may arise during the course of the hearing. Whilst Mr Benzynie acknowledged that, under Rule 19(5), this virtual hearing was being held in private, he made an application that any references to health be marked as private in the transcript and the panel's determination.

Having heard Mr Benzynie's submissions and the advice of the legal assessor, the panel was satisfied that it was appropriate that any references to Mr Norman's health be marked as private in the transcript and the panel's determination.

Decision on proof of service

The panel was informed at the start of this hearing that Mr Norman was not in attendance nor was he represented in his absence.

The panel was referred to Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ("the Rules").

Notice of today's hearing was posted via recorded delivery on 2 July 2020 to Mr Norman's registered address on WISER. An address trace was carried out and a trace report dated 17 July 2020 confirmed that Mr Norman was still residing at his registered address on the NMC WISER system. The report also provided a new telephone number. Follow up emails were sent to Mr Norman, and a number of telephone calls were made by the NMC case officer, with no reply.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mr Norman's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence. It was also sent in accordance with the 28 day notice period rule.

Mr Benzynie, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of the Rules.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Norman has been served with notice of this hearing in accordance with the requirements of the Rules.

Decision and reasons on proceeding in the absence of Mr Norman

The panel next considered whether it should proceed in the absence of Mr Norman. It had regard to Rule 21 and heard the submissions of Mr Benzynie who invited the panel to continue in the absence of Mr Norman.

Mr Benzynie referred the panel to a number of telephone calls made where voice messages were left for Mr Norman. He further referred the panel to email correspondence from the NMC's attempts to contact Mr Norman in advance of today's hearing. He reminded the panel that Mr Norman has not engaged with these proceedings and did not attend his substantive hearing, or his previous review hearing. Mr Benzynie submitted that, in the light of Mr Norman's lack of engagement and the NMC's numerous attempts to contact him, the panel should proceed in his absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Norman. In reaching this decision, the panel has considered the submissions of Mr Benzynie and the advice of the legal assessor. It had particular regard to the cases of *Jones* and *Adeogba*, and to the overall interests of justice and fairness to all parties. It noted that:

- Mr Norman has not engaged with NMC proceedings at any stage, and has not attended previous hearings;

- No application for an adjournment has been made by Mr Norman;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Norman.

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 7 September 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a suspension order originally imposed by a Fitness to Practise panel on 5 February 2019 as a 12 month suspension order. The order was reviewed on 27 January 2020, and a further period of suspension was imposed for a period of 6 months. The current order is due to expire at the end of 7 September 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 and employed as Band 6 Charge Nurse and/ or as an Emergency Nurse Practitioner in the Emergency Department of the Hywel Dda University Health Board:

1) *On 2 September 2015 in relation to Patient C:*

a) *Administered/signed out 5mg Intranasal Diamorphine at or about 10:48 without:*

ii) Without a second checker/witness being physically present to witness the administration;

iii) Whilst not on duty;

b) Recorded the signing out/administration of one or more doses of intranasal diamorphine in the CDRB:

i) With the incorrect date;

ii) ...

5) On 20 September 2015, in relation to Patient B:

a) Inappropriately administered/signed out one or more doses of intranasal diamorphine to Patient B:

i) ...

ii) ...

iii) Without a second checker/witness being present to witness the administration;

iv) Whilst not on duty;

6) On 20 September 2015, in relation to Patient D:

a) Inappropriately administered/signed out one or more doses of intranasal diamorphine to Patient D:

i) ...

ii) Whilst not on duty.

7) On 20 September 2015, administered/recorded the administration of diamorphine to one, or more, patients whilst not on duty, namely:

a) ...

b) ...

c) Unknown Patient at 19:10;

d) Unknown Patient at 20:40

8) On 27 September 2015, in relation to Patient Z:

a) Administered intranasal diamorphine without a valid/signed prescription at or about 20:10;

b) Incorrectly recorded that there was a signing out/administration of diamorphine at or about 14:40;

c) ...

9) ...

10) On 1 October 2015, in relation to Patient I:

a) Recorded the signing out/administration of intranasal diamorphine in the CDRB at 16:30, without signing the A&E/Prescription card to confirm administration;

b) Recorded having witnessed the administration of intranasal diamorphine in the CDRB at 17:40 without:

i) a valid/signed prescription;

ii) ...

11) On 4 October 2015, in relation to Patient A:

a) On one or more occasions inappropriately administered intranasal diamorphine to Patient A:

i) ...

ii) ...

iii) ...

iv) ...

v) In the relatives room/an unsuitable environment

b) Recorded the signing out/ administration of one or more doses of intranasal diamorphine in the CDRB:

i) With the wrong date;

ii) ...

12) On 4 October 2015, in relation to Patient J:

a) Inappropriately administered and/or witnessed the administration of intranasal diamorphine to Patient J whilst not on duty;

b) Administered and/or recorded the administration of Intranasal Diamorphine to Patient J without a second checker/witness;

13) On 13 October 2015 , in relation to Patient L:

a) Administered intranasal diamorphine at 21:05:

i) without a second checker/witness;

ii) Whilst not on duty;

b) Recorded the signing out/administration of intranasal diamorphine at 21:05, by signing the CDRB as both the administering nurse and the second checker/witness;

14) On 19 October 2015, in relation to Patient O recorded the signing out/administration of intranasal diamorphine at or about 21:50 without a second checker/witness;

15)...

16) On 1 November 2015, in relation to Patient A:

a) ...

b) On one or more occasions, inappropriately administered intranasal diamorphine to Patient A:

i) Without a prescription and/ or verbal authority to do so;

ii) *Without performing and/or recording observations every 5 to 10 minutes for the first hour after administering the medication or any adequate observations;*

iii) ...

iv) *In the Relatives Room/a non-clinical area;*

v) ...

vi) ...

c) *Completed an A&E administration card incorrectly in that, you:*

i) ...

ii) *Did not record the time for one or more administrations of diamorphine;*

d) ...

17)...

18)...

19) *In relation to any and/or all of the charges referred to above, you failed to ensure/maintain an adequate records in that you:*

a) *did not ensure that the CDRB and administration record on the prescription sheet were signed at the same time;*

b) *did not provide a clear/accurate record for the amount of Diamorphine used and/or wasted.*

AND, in the light of the above, your fitness to practise is impaired by virtue of your misconduct

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

The panel considered whether Mr Norman's fitness to practise remains impaired. It noted that Mr Norman did not attend his substantive hearing and that panel had no evidence of any remediation or insight from Mr Norman. This panel was in the same situation. There has been no engagement from Mr Norman with the NMC since his substantive hearing. Mr Norman has provided no new information for this reviewing panel and attempts made by the NMC to contact him have been unsuccessful. In the absence of any evidence of insight or remediation, the panel considered that Mr Norman's fitness to practise remains impaired on public protection grounds, for the same reasons identified by the substantive panel in February 2019.

This panel also determined that a finding of current impairment continued to be required on public interest grounds in order to maintain confidence in the nursing profession and the NMC as its regulator, and also to reinforce the expectation that registrants cooperate with their regulator.

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

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

The panel then moved on to consider a suspension order. It agreed with the reasons of the substantive panel that, although Mr Norman's misconduct was serious, it is not so serious as to be fundamentally incompatible with ongoing registration and could be remediated, should Mr Norman choose to do so. The panel considered that a further period of suspension would give Mr Norman an opportunity to develop his insight, remediate his failings, and demonstrate his commitment to returning to safe nursing practice to a future panel.

The panel had regard to the fact that Mr Norman has been suspended for almost 12 months and, despite this, has not provided any evidence to this panel to suggest that he intends to remediate his practice. With this in mind, the panel gave serious consideration to whether a further period of suspension would serve any useful purpose, or whether Mr Norman's lack of engagement meant that a striking-off order was now an appropriate sanction. The panel bore in mind that all registered nurses have a duty to cooperate with the NMC and Mr Norman has not taken the opportunity afforded to him by the substantive panel to demonstrate further insight or remediation.

However, this panel had no information regarding Mr Norman's current situation which may explain his lack of engagement. It bore in mind that, should he decide to re-engage, his misconduct is capable of remediation and is not, in itself, so serious as to warrant a striking-off order. The panel therefore decided that a striking-off order would be disproportionate at this time.

The panel therefore determined that the appropriate and proportionate order was a suspension order. The panel considered that 6 months was the appropriate length of time for the order, which would give Mr Norman a further opportunity to re-engage with the NMC and demonstrate a willingness to remediate his misconduct.

This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 7 March 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.

The panel wishes to make clear that if Mr Norman does not take this opportunity to re-engage with the NMC then the next reviewing panel may decide that his persistent non-engagement is incompatible with being a registered nurse and decide that a striking-off order is the only appropriate outcome.

Before the end of the period of this order, a panel will review the order at a hearing or a meeting. At this review, the panel may revoke or confirm the order, or it may replace the order with another order. Mr Norman or the NMC may apply for an early review of the order should circumstances change.

Any future reviewing panel may be assisted by:

- *Mr Norman's attendance;*
- *A reflective piece demonstrating insight into his actions and their impact on patients, colleagues and the wider profession;*
- *Testimonials from employers or voluntary work, whether from a healthcare setting or elsewhere;*
- *Evidence of Mr Norman keeping up to date with nursing knowledge and skills;*
- *Details of any courses Mr Norman has undertaken, particularly in relation to pain management, medicines, and record keeping.*

Decision on current fitness to practise

The panel considered carefully whether Mr Norman'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 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 substantive panel and evidence of the attempts made by the NMC to contact Mr Norman.

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 Norman's fitness to practise remains impaired. It noted that Mr Norman did not attend his substantive hearing or his previous review hearing. The panel had no evidence of any insight through a reflective piece or Mr Norman's engagement with these proceedings. There was nothing before this panel to show that Mr Norman has taken steps to remediate his practice by undertaking training or reading to maintain his nursing skills. This panel had no indication of Mr Norman's future intentions with regards to nursing. Mr Norman has not engaged with these proceedings, and this panel was in the same situation as the previous panels. Mr Norman has provided no new information for this reviewing panel and attempts made by the NMC to contact him have been unsuccessful. This panel considered that the findings against Mr Norman are serious and wide-ranging. In the absence of any evidence of insight or remediation, the panel considered that Mr Norman's fitness to practise remains impaired on public protection grounds.

This panel also determined that a finding of current impairment continued to be required on public interest grounds in order to maintain confidence in the nursing profession and the NMC as its regulator, and also to reinforce the expectation that registrants cooperate with their regulator.

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

Determination on sanction

Having found Mr Norman'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 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 identified risk to patients and Mr Norman's lack of engagement. 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 on the grounds that Mr Norman's impairment was not at the lower end of the spectrum, and a caution order would not protect the public.

The panel next considered a conditions of practice order. It noted that Mr Norman's misconduct relates to identifiable areas of his clinical practice and, as such, it may be possible to formulate conditions of practice which would address these areas and protect the public. However, in the absence of any engagement from Mr Norman, the panel had no evidence to suggest that Mr Norman would be willing to engage or comply with any conditions imposed on his registration. The panel therefore determined that conditions of practice would not be appropriate or workable. They would also be insufficient to satisfy the public interest at this time.

The panel next considered imposing a further suspension order. It took into account the seriousness of the charges found proved and Mr Norman's continued lack of engagement with the regulatory process. It took into account the previous reviewing panel's reasons that a suspension order would allow Mr Norman further time to re-engage with the NMC's proceedings. This panel has seen no evidence that Mr Norman is willing to engage with these proceedings and remediate his practice. He has not engaged in any form with the NMC. This panel therefore was not satisfied that Mr Norman would make use of a further period of suspension to re-engage. For these reasons, the panel considered that a further suspension order would serve no useful purpose, and would not be appropriate.

The panel then considered whether strike-off was appropriate and proportionate in the circumstances. It noted that the previous reviewing panel stated in its determination, which was sent to Mr Norman, that a strike-off would be available to any future reviewing panel. This panel considered Mr Norman's persistent failure to demonstrate a commitment to and engage with the process of remedying the failings identified in his practice, and regretfully concluded that striking off Mr Norman's name from the register was the only appropriate and proportionate sanction available to the panel.

The striking-off Order will take effect from the expiry of the current order at the end of 7 September 2020 in accordance with Article 30(1) of the Order.

This decision will be confirmed to Mr Norman in writing.

That concludes this determination.