

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

**Substantive Order Review Hearing
23 June 2020**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: Liam Gilligan

NMC PIN: 05H0319E

Part(s) of the register: Registered Nurse (Sub Part 1)
Learning Disabilities Nurse – September 2005

Area of Registered Address: England

Type of Case: Lack of Competence

Panel Members: Kathryn Eastwood (Chair, Registrant member)
Carol Porteous (Registrant member)
Alice Rickard (Lay member)

Legal Assessor: Bruce Erroch QC

Panel Secretary: Aoife Kennedy

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mr Gilligan: Present and not represented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: Conditions of practice order (18 months), to come into effect upon expiry, namely at the end of 1 August 2020 in accordance with Articles 30(2) and 30(4)(d)

Decision and reasons on application under Rule 19

At the outset of the hearing, Mr Webb informed the panel that matters relating to your health may arise during the course of the hearing. Whilst Mr Webb 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 Webb's submissions and the advice of the legal assessor, the panel was satisfied that it was appropriate that any references to your health be marked as private in the transcript and the panel's determination.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a period of 18 months. This order will come into effect upon expiry of the current order, namely at the end of 1 August 2020, in accordance with Articles 30(2) and 30(4)(d) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the tenth review of a substantive order, originally imposed as a 12 month suspension order by a panel of the Conduct and Competence Committee on 2 October 2012. This order was reviewed on 18 October 2013 and 18 September 2014 and extended on each occasion. It was reviewed again on 30 December 2014, where the suspension order was replaced with an interim conditions of practice order for a period of 12 months. The fourth review took place on 21 December 2015, where the conditions of practice order was extended for another 12 months. It was replaced with a 6 month suspension order at the fifth review on 3 January 2017. The sixth review took place on 27 July 2017, where the suspension order was replaced with an 18 month conditions of practice order, which was due to expire at the end of 1 February 2019.

The seventh review of this order was scheduled for 18 December 2018 as a substantive review meeting. You did not attend this review but did provide a number of documents in advance. However, due to an error on the part of the NMC, these documents were not provided to the reviewing panel. The panel therefore went on to make its decision on impairment and sanction without the benefit of this material. This decision was deemed to be unfair and unsafe, having been made without all of the relevant information. The decision made at this hearing would not have come into effect until the expiry of the conditions of practice order (made on 27 July 2017), at the end of 1 February 2019.

The eighth review of the order took place on 22 January 2019 and the panel imposed a six month conditions of practice order. This order was amended and extended for a period of 12 months at the ninth review on 24 June 2019.

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, whilst employed by Coventry and Warwickshire Partnership NHS Trust ("the Trust") as a Band 5 registered nurse, failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision at 1 Tuxford, Brooklands Hospital in that:

- 1. After commencing Stage 1 of the Trust's Poor Performance Policy on 7 December 2009 you:*
 - a) On 10 December 2009, during a supervised medication round at 08:00:*
 - i) Attempted to measure 0.25mg of liquid risperidone in a 5ml syringe*
 - ii) Did not demonstrate knowledge relating to risperidone, when questioned*
 - iii) Did not demonstrate knowledge relating to carbamazepine, when questioned*

- c) *On 24 March 2010, during a supervised medication round you used a 5ml syringe to measure 0.25mg of Risperidone;*

- d) *On 19 April 2010, during a supervised medication round, you were unable to demonstrate knowledge about medication that you had administered, namely:
 - i) *Zonisamide;*
 - ii) *Biotin;*
 - ii) *L-Carnitine;*
 - iv) *Maxepa;**

- e) *On 20 April 2010, you failed to sign for the administration of Zuclopenthixol to Service User C*

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

“At this hearing you provided written evidence to the panel of emails detailing your attempts to gain a report about your health. You also made admissions at the outset of the hearing that your current fitness to practice remains impaired.

In its consideration of whether you have remedied your practice the panel took into account the “PCMA - Practical Competencies in Medicines Administration (Full Day)” course that you had undertaken on 21 May 2019.

The panel was mindful that the certificate related to medication administration training, but determined that it was insufficient alone to demonstrate fully that you have completed an assessment in relation to the theoretical and practical aspects of medications management.

The last panel determined that you were liable to repeat matters of the kind found proved. This panel has received no new information to suggest that this has changed. In light of this the panel determined that you are still 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 required.

For these reasons, the panel finds that your fitness to practise remains impaired.”

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

“The panel noted that the course you have undertaken did not demonstrate any theoretical or practical assessment and there was no detail provided of the content of the course, as stipulated in your current conditions of practice order. The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting that conditions could be formulated which would protect patients during the period they are in force. 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 12 months, which will come into effect on the expiry of the current order. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

1. You must undertake a medicines administration and management course which includes

- a theoretical assessment*
- practical assessment*

of competence in medicines knowledge and administration. The content and the outcome of this course must be forwarded to the NMC at least 14 days before the next review hearing.

2. You must not administer medicines unsupervised until you have successfully complied with condition 1.

3. You must demonstrate that you are actively maintaining knowledge of medicines and medicine administration.

4. [PRIVATE]

5. You must provide testimonials/references from your current employer to the NMC at least 14 days before the next review hearing.

6. You must tell 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.

7. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.

8.

a. You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name and contact details of the individual or organisation offering the post, employment or course of study.

b. You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individuals/organisation with whom you have entered into the arrangement.

9. *You must immediately tell 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 (8) 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) to provide nursing services.*
- c. *Any prospective employer (at the time of application) where you are applying for any nursing appointment.*
- 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)*

The panel carefully considered imposing a suspension order, given the number of review hearings that have taken place and the length of time that you have been out of nursing practice. However, it determined that a further conditions of practice order would allow you to complete a Return to Practise (RTP) course and work towards demonstrating evidence of updating and improving your nursing practice. It also decided that a suspension order would be a disproportionate sanction in your case.

The panel noted that any future reviewing panel would be assisted by:

- *Evidence of your intention to return to the nursing profession*
- *A reflective piece demonstrating your knowledge and understanding of how the nursing profession has changed, given the significant amount of time that you have been out of practice.”*

Decision and reasons on current fitness to practise

This panel today considered carefully whether your 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 decisions of previous panels. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and an on-table document. It has taken account of the submissions made by Mr Webb on behalf of the NMC and those made by you.

You told the panel that nothing has changed since your previous review. You continue to work as a support worker for the same employer. You said that you had enrolled in a medicines management course which was due to start in March 2020, but that this was cancelled due to the ongoing pandemic. You said that you did not produce a reflective piece or any references as you had submitted these for previous hearings, and were not aware that you had to submit further information for this hearing. You said that you wish to return to nursing, but cannot do so until your current contract ends.

Mr Webb submitted that your fitness to practise remains currently impaired as you have not demonstrated the required remediation. He submitted that no new information has been provided to undermine the previous finding that your fitness to practise is impaired. Mr Webb acknowledged the delays caused by the current pandemic and your potential misunderstanding in relation to the current conditions of practice. However, he submitted that, given the lack of remediation or reflection, your fitness to practise remains impaired.

Mr Webb invited the panel to continue the current conditions of practice order for a minimum period of 12 months.

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 your fitness to practise remains impaired. It considered that the deficiencies identified in your practice are remediable, but have not yet been remedied. The panel was concerned that you have not fully complied with your current conditions of practice order, in particular conditions 4 and 5 in that you have not produced a reflective piece or references. The panel accepted that you were unable to undertake a medicines management course in March as you had arranged due to the current pandemic. As you have not remediated your practice, the risk of repetition remains. 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 required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 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 decided to extend the current conditions of practice order for a period of 18 months.

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 order 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 next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting that conditions could be formulated which would protect patients during the period they are in force. Further, the panel considered that a further conditions of practice order would allow you remediate the deficiencies identified in your practice, to complete a medicines management course, and to demonstrate competence in medicines management.

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 18 months, which will come into effect on the expiry of the current order. It decided that the current conditions of practice order was appropriate and proportionate in this case:

1. You must undertake a medicines administration and management course which includes
 - a theoretical assessment
 - practical assessment

of competence in medicines knowledge and administration. The content and the outcome of this course must be forwarded to the NMC at least 14 days before the next review hearing.

2. You must not administer medicines unsupervised until you have successfully complied with condition 1.
3. You must demonstrate that you are actively maintaining knowledge of medicines and medicine administration.
4. **[PRIVATE]**
5. You must provide testimonials/references from your current employer to the NMC at least 14 days before the next review hearing.
6. You must tell 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.
7. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
8.
 - a. You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name and contact details of the individual or organisation offering the post, employment or course of study.
 - b. You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individuals/organisation with whom you have entered into the arrangement.

9. You must immediately tell 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 (8) above, to them.

- e. Any organisation or person employing, contracting with, or using you to undertake nursing work.
- f. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.
- g. Any prospective employer (at the time of application) where you are applying for any nursing appointment.
- h. 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)

The panel considered a suspension order, but decided that such an order would serve no purpose as it would not allow you to remediate your practice.

The panel gave serious consideration to a striking-off order, given the number of opportunities you have had to return to nursing practice, and the length of time that you have been out of nursing practice. Although it decided that this would be disproportionate at this stage, it sought to remind you that, should you fail to comply with these conditions, or should you fail to demonstrate to a future reviewing panel that you have a real commitment to returning to nursing, that future reviewing panel may consider that a striking off order would be only appropriate sanction.

The panel decided that a conditions of practice order for a period of 18 months would be appropriate given the potential challenges to you being able to access a medicines management course.

The panel considered that any future reviewing panel would be assisted by:

- Evidence of your intention to return to the nursing profession
- A reflective piece demonstrating your knowledge and understanding of how the nursing profession has changed, given the significant amount of time that you have been out of practice

In accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 this condition of practice order will come into effect upon the expiry of the existing conditions of practice order, namely at the end of 1 August 2020.

This decision will be confirmed to you in writing.

That concludes this determination.