

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

**Substantive Order Review Hearing
15 May 2020**

Virtual Hearing

Name of registrant: Andrew John Sweeney Anderson

NMC PIN: 91E0364S

Part(s) of the register: RN1: Registered Nurse (Sub Part 1)
Adult Nursing (16 August 1994)

Area of registered address: Dundee

Type of case: Misconduct

Panel members: Noreen Kent (Chair, Registrant member)
Evette Roberts (Registrant member)
Jayanti Durai (Lay member)

Legal Assessor: Gelaga King

Panel Secretary: Roshani Wanigasinghe

Nursing and Midwifery Council: Represented by Dulcie Piff, Case Presenter

Mr Anderson: Present and represented by Deirdre Flanigan,
instructed by Thompsons Solicitors

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

Fitness to practise: Impaired

Outcome: **Varied Conditions of practice order (12 months) to come into effect at the end of 6 June 2020 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order.

This order will come into effect at the end of 6 June 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 12 months by a Conduct and Competence Committee on 8 May 2017. This was reviewed, amended and extended for a further 12 months on 8 May 2018. The second reviewing panel decided to impose a varied conditions of practice order on 24 May 2019. The current order is due to expire at end of 6 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:

- 1. On 12 May 2014, administered dalteparin to an unknown patient when it was not prescribed to that patient.*
- 2. On 28 June 2014, administered vancomycin to Patient A when it was not prescribed to that patient.*
- 3. On 27 January 2015:*
 - a. Were involved in the administration of 50 mg of morphine sulphate to Patient B, when 40mg was prescribed.*
 - b. Did not promptly escalate your error described at charge 3.a to a senior nurse and/or doctor.*

4. *Were dishonest in your conduct alleged at 3.b in that, during the delay in escalation, you deliberately intended to conceal your error.*

And, in light of the above, your fitness to practice is impaired by reason of your misconduct.”

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

“The panel considered whether your fitness to practise remains impaired. The panel considered the findings of the previous panels’ in regards to your insight. The panel noted that you had demonstrated remorse and insight in your reflective piece provided to the panel in May 2017.

The panel noted your evidence that you continue to work in a non-registered nursing role, albeit within the healthcare sector, and your evidence that you have not been able to comply with your current conditions of practice order. The panel considered there is nothing before it to suggest that your circumstances have changed since the last review hearing.

The panel considered that, although the concerns identified are remediable, you have not demonstrated the necessary remediation and have not addressed the identified concerns in your practice. As such there remains a real risk of you repeating your previous failings.

The panel considered that a more proactive approach was required by you in order to demonstrate remediation of the concerns identified and compliance with your conditions of practice order.

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 second 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 case. The panel decided that it would be neither proportionate nor adequately protect the public or satisfy 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. Such an order would not address the concerns raised around medication administration. The panel decided that it would be neither proportionate nor adequately protect the public or satisfy the public interest to impose a caution order.

The panel next considered a conditions of practice order. The panel was of the view that the continuation of the current conditions of practice order would adequately protect the public and satisfy the wider public interest.

The panel determined that as you have again not yet been able to engage with your conditions of practice order, for the reasons already stated more time should be afforded to you.

However, the panel also determined that more onus needed to be placed upon you to achieve compliance. The panel noted that you have not approached your HR department, Union or any in house development support within the nursing directorate for assistance in complying with your conditions of practice order or in securing a registered nurse position which may be beneficial to you.

Further the panel was of the opinion that the conditions of practice order was not overly onerous and considered that the conditions imposed were necessary to ensure the continued protection of the public until such a time as you have

remediated the concerns identified, should you be successful in securing a nursing position in future.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to continue the current conditions of practice order, with a minor amendment to condition 2, for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 6 June 2018.

The following conditions are now appropriate and proportionate in this case:

- 1. At any time that you are employed or otherwise providing nursing services, you must not be involved in any aspect of medication administration or management without direct supervision from another NMC Registrant for at least 20 medication administration rounds and following that not until you are signed off as competent by your line manager.*
- 2. You must successfully undertake and pass a medication administration assessment within 6 months of the date on which these conditions become effective, and send a copy of your results to the NMC within 28 days of you receiving them.*
- 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. Medication administration and management.**
- 4. In addition you will complete:*
 - o Reflection of learning from your 20 supervised medication rounds*
 - o A monthly reflection of your medicines administration practice when no longer requiring the supervision of another registrant. .*

These will be discussed with your line manager and sent to the NMC at least 7 days before any NMC review hearing or meeting

5. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss and document 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, whichever is sooner.*
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 7 days before any NMC review hearing or meeting.*
8. *You must tell the NMC within 7 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
9. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
10. *You must within 7 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.*
11. *You must immediately tell the following parties that you are subject to Conditions of Practice Order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (10) 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 considered the imposition of a suspension order but determined that it would be disproportionate at this time.”

Decision and reasons on current impairment

This panel has 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. 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 and your reflective statement. It has taken account of the submissions made by Ms Piff on behalf of the NMC and those made by Ms Flanigan on your behalf.

Ms Piff outlined the background to the case. She submitted that you have not yet been able to demonstrate remediation of the concerns previously identified, as you are not currently working in the position of a registered nurse. Ms Piff submitted evidence that you have taken proactive steps to seek employment as a registered nurse which would enable

you to comply with the conditions of practice order. Ms Piff submitted that the NMC's view is that as to date you have not been able to secure employment, and therefore comply with the conditions, the panel may wish to find you impaired on this basis. She indicated that continuing the current conditions of practice order for a further period of time would address the need to protect the public and address the public interest concerns in this case.

Ms Flanigan, on your behalf, requested the panel to vary the current conditions of practice order. She told the panel that you remain in your Band 3 role for NHS Tayside in the theatre department at Ninewells Hospital where you have worked since January 2016. She told the panel that there have been no concerns raised with regard to your performance in your current role but the lack of medication administration by nurses in the department has meant you have not had the opportunity to comply with the conditions of practice order. She drew the panel's attention to the previous panel's findings that you had shown insight and remorse and recognised the severity of your actions. She submitted that the previous panel found that there was a minimal risk of the dishonest behaviour previously identified reoccurring.

Ms Flanigan informed the panel of the multiple attempts you had made in obtaining a band 5, registered nurse role. She informed the panel of your several unsuccessful job applications. Ms Flanigan submitted that you had applied for a further registered nurse post on 17 February 2020, and that the application is currently under review. Ms Flanigan submitted that you have taken the advice of the previous panel in attempting to remediate the concerns, however, you remain unsuccessful a year later with the current conditions. She drew the panel's attention to correspondence between you and prospective employers that showed that the conditions of practice were a barrier to employment. She submitted that the panel should consider amending the conditions of practice order to remove conditions 3, 4, 5 and 7 which were overly onerous for any future employer to fulfil. Ms Flanigan submitted that it is your position that, should the panel vary the current conditions, it would enable you to obtain work and remediate the concerns identified.

Ms Flanigan submitted it was in the public interest to return an experienced nurse to practice and that to continue the current conditions of practice would deny the public access to an experienced nurse.

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. The panel considered the findings of the previous panels' in regards to your insight. The panel noted that you had demonstrated remorse and insight in your reflective piece provided to the panel in May 2017.

The panel noted that the last reviewing panel found that you had demonstrated remorse and insight. At this hearing, the panel was of the same view. It accepted that you have demonstrated an understanding of how your actions put patients at a risk of harm and why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. It had no new information which contradicted this and was of the view that you had demonstrated insight and remorse over the course of the NMC proceedings.

In its consideration of whether you have remedied your practice, the panel took into account the fact that you have not been able to comply with the current conditions due to the nature of your non-nursing role. It accepted that you had taken proactive steps to find employment which would assist in you complying with the conditions, but have been unsuccessful to date.

The panel considered that, although the concerns identified are remediable, you have not demonstrated the necessary remediation and have not addressed the identified concerns in your practice. As such there remains a real risk of you repeating your previous failings.

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 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.

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' (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 risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor adequately protect the public or satisfy the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the risk of repetition identified and seriousness of the public protection concerns in this case, an order that does not restrict your practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a further conditions of practice order on your 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have been unable to comply with conditions of practice due to your current role and that you have been unsuccessful thus far in obtaining a nursing role.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there were no deep seated attitudinal problems. In this case, there are conditions which could be formulated which would protect patients during the period they are in force. The panel noted the submissions of Ms Flanigan in regard to the conditions placing too much onus on employers and this fact negatively impacting on your success in securing a registered nurse position.

The panel reminded itself that their essential role is to protect the public and therefore any conditions varied must adequately address and preserve patient safety. The panel decided to amend previous conditions 1,4, 5 and 7 to better assist you in gaining employment as a registered nurse and to comply with this conditions of practice order. It removed the previous conditions 3 and 6, which were in relation to a requirement for a personal development plan as this forms part of routine nursing development practice. The panel was of the view that the new condition 1 and 2 specifically addressed the areas of concern and that evidence of successful compliance with these would meet the public protection element and evidence required at a future review hearing.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response, given your continuing engagement with the NMC proceedings and your recent attempt to secure a nursing position and your continued commitment to the healthcare sector.

Accordingly, the panel determined, pursuant to Article 30(1)(c) 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, namely at the end of 6 June 2020. The panel decided to impose the order for a period of 12 months as it bore in mind the extra time that may be needed for members within the health care sector to view and progress job applications due to the current COVID-19 Pandemic. The panel decided to impose the following conditions which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also,

'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. *You must not carry out medicines administration unsupervised until deemed competent to safely do so by a Band 6 or equivalent registered nurse.*
2. *You must successfully undertake and pass a medicines management course within 6 months of the date on which these conditions become effective, and send a copy of your results to the NMC within 28 days of you receiving them.*
3. *In addition you will complete:*
 - *Reflection of learning from your supervised medication rounds*
 - *A monthly reflection of your medicines administration practice when no longer requiring the supervision of another registrant.*

These will be discussed with your line manager and sent to the NMC at least 7 days before any NMC review hearing or meeting
4. *Until such time that you are deemed competent in the safe administration and management of medicines, you must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss and document the standard of your performance and your progress in this area of practice.*
5. *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 safe practice in the area of medicines management including administration to the NMC at least 7 days before any NMC review hearing or meeting.*
6. *You must tell the NMC within 7 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 7 days of you receiving notice of them.*
8. *You must within 7 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.*
9. *You must immediately tell the following parties that you are subject to 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).*

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 June 2020 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to consider how well you have complied with the order and remediated the concerns identified. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

This will be confirmed to you in writing.

That concludes this determination.