

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

**Substantive Order Review Meeting  
Wednesday 11 November 2020**

Nursing and Midwifery Council  
Virtual Meeting

**Name of registrant:** Elzbieta Katarzyna Chomicka

**NMC PIN:** 17F0002C

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – June 2017

**Area of registered address:** Renfrewshire

**Type of case:** Misconduct

**Panel members:** David Boden (Chair, lay member)  
Deborah Tymms (Registrant member)  
Deborah Jones (Lay member)

**Legal Assessor:** Charles Apthorp

**Panel Secretary:** Ruth Bass

**Order being reviewed:** Suspension order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Strike off order to come into effect at the end of 23 December 2020 in accordance with Article 30 (1)**

## **Decision and reasons on service of Notice of Meeting**

Notice of this meeting was sent to Miss Chomicka on 8 October 2020 by email, to her email address as recorded on the Nursing and Midwifery Council's (NMC's) Register. The panel was satisfied that notice had been served, as advised by the legal assessor, in compliance and accordance with Rules 11 A and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended 2012) (the Rules).

The panel was also satisfied that this matter is suitable to be dealt with at a meeting as opposed to a hearing. The panel had regard to the fact that Miss Chomicka had acknowledged receipt of the hearing bundle and had not requested a hearing, or made any submissions. The panel was of the view that it was able to make a determination in this case based on the documents before it, and that a hearing was not required.

## **Decision and reasons on review of the substantive order**

The panel decided to impose a strike off order. This order will come into effect at the end of 23 December 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 22 November 2019. The current order is due to expire at the end of 23 December 2020.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved, some by way of admission, which resulted in the imposition of the substantive order were as follows:

*'That you a registered nurse:*

1. *On 2 October 2017 did not administer and/or document administration or non-administration of Flucloxacillin to Resident BC at:*

- i. Morning 1 and/or*
- ii. Lunchtime and/or*
- iii. Teatime.*

2. *On 17 October 2017:*

*a) Did not record a telephone conversation with the hospital in which you were informed of Resident AT's change in medication.*

*b) Did not update Resident AT's MAR Chart and/or patient notes to document a change in medication.*

*c) Did not inform any other member of staff about the change in Resident AT's medication*

*d) Did not remove from Resident AT's bag:*

- i. new medications prescribed to Resident AT on hospital discharge.*
- ii. Hospital discharge letters.*

*e) Did not administer the new medication to Resident AT.*

3. *On 18 October 2017, during a telephone conversation with (Person 1) told her that you had not been on shift the previous evening (17 October 2017).*

4. *Your conduct in relation to Charge 3 above was dishonest as you knew that you had been the nurse in charge on that shift.*
5. *On 18 October 2017, told Person 2 that the hospital did not tell staff at the care home that Resident AT's medication had changed.*
6. *Your conduct in relation to Charge 5 above was dishonest in that you knew you had taken a telephone call from the hospital on 17 October 2017 alerting you to the fact that Resident AT's medication had been changed.*
7. *On or around 21 October 2017, did not document concerns raised by Resident MW's relative about the lack of improvement of Resident MW's finger.*
8. *Did not follow up on concerns raised by Resident MW's relative about Resident MW's finger not improving in that you:*
  - a) *Did not escalate to a senior member of staff and/or medical professional the concerns raised.*
  - b) *Did not examine Resident MW's finger.*
9. *On 21 October 2017 did not set the alert beam in Resident AT's room after administering her lunchtime medications.*

*AND, in light of the above, your fitness to practise is impaired by reason of your MISCONDUCT.'*

The original panel determined the following with regard to impairment:

*'The panel concluded that on multiple occasions you did put patients at an unwarranted risk of harm. [PRIVATE].*

*Regarding insight, the panel considered that your insight was still developing. The panel noted that during your evidence today you acknowledge the harm that could have come to the residents – particularly Resident MW. However in the absence of a reflective piece, training, or any work undertaken in a healthcare setting, there is no evidence before the panel to suggest that this would not happen again.*

*The panel was satisfied that some of the misconduct in this case is capable of remediation. However, as of today's proceedings, the panel have no other evidence before it of any remediation. Remediation where there has been dishonesty is much more difficult to demonstrate.*

*Consequently, the panel is of the view that as of today, there is a high risk of repetition if you were to return to unrestricted practice based on the fact that you not yet remediated your failings. Further, the panel noted that you were dishonest on two separate occasions which has an adverse impact on the profession. The panel also noted that without evidence of deeper insight and practical steps towards remediation there is nothing to suggest that you would not be dishonest again. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. It noted that the charges found proved demonstrated that you are unable to perform fundamental basic nursing duties safely. The panel considered that any nurse not practising at the standard required, or with complete honesty, could bring the profession into disrepute. The panel decided that, in this case, a finding of impairment on public interest grounds was required.*

*Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.'*

The original panel determined the following with regard to sanction:

*'The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

*The panel was satisfied that in the exceptional circumstances of this case, the misconduct was not fundamentally incompatible with remaining on the register. Your dishonesty appeared to be linked closely to your situation [PRIVATE].*

*It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.*

*The panel noted that your personal circumstances affected your state of mind at the time of the concerns. It also noted that these circumstances have improved so the risk has been mitigated. You have shown responsibility and some courage in taking steps [PRIVATE] which suggested that you have the resolve to ensure that in future you will act to protect patients and the public by taking appropriate steps to prioritise patient care. Although you were newly qualified at the time of these events the panel was satisfied that you have the potential, with insight*

*and commitment, to become a useful and responsible nurse. The panel considered that you do not have any deep attitudinal problem.*

*Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction to match the seriousness of the matters found proved. It noted that your dishonesty was at the lower end of the spectrum and it was not premeditated. It bore in mind that your dishonesty appeared to arise from two isolated moments of panic and was not over an extended period of time although you have yet to admit your dishonesty. The panel was of the view that you recognise the impact your actions had on patients and colleagues and considered your limited insight could be substantially further developed over a period of suspension.*

*The panel noted the hardship such an order will inevitably cause you. It would like to highlight to you that a suspension order only prevents you from working as a registered nurse. But your potential financial hardship is outweighed by the public interest in this case, and the need to protect the public.*

*The panel considered that this order is necessary to protect the public and mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.*

*The panel determined that a suspension order for a period of one year was appropriate in this case to mark the seriousness of the misconduct.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Miss Chomicka'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, namely the NMC bundle and an email from Miss Chomicka dated 1 October 2020, acknowledging receipt of the NMC's bundle.

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 Miss Chomicka's fitness to practise remains impaired.

The panel had regard to the original panel's comment that Miss Chomicka's *'limited insight could be substantially further developed...'* and that she had not remediated her failings.

This panel noted that it had not received any information from Miss Chomicka since the substantive hearing. In the absence of any evidence demonstrating that Miss Chomicka has sufficient insight, or that she has remediated the misconduct, the panel was of the view that there remains a risk of repetition. It 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 Miss Chomicka's fitness to practise remains impaired.

## Decision and reasons on sanction

Having found Miss Chomicka'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 and the public protection issues identified. 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 Miss Chomicka'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 Miss Chomicka's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the dishonesty 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 order on Miss Chomicka's registration would 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 the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel had regard to the fact Miss Chomicka has not engaged in any meaningful way, other than to confirm receipt of the NMC bundle. The panel was therefore of the view that any conditions of practice formulated would not be workable. It also had regard to the nature of the misconduct and was of the view that it

would not be able to formulate conditions of practice that would adequately address the concerns relating to Miss Chomicka's dishonesty in any event.

The panel next considered imposing a further suspension order. The panel had regard to the decision letter from the substantive hearing dated 25 November 2019, and noted the clear list of items suggested that would assist a reviewing panel, namely:

- A comprehensive reflective piece addressing the clinical failings and your personal circumstances that led to your dishonesty. Further, it would want it to also address what you would do differently and why it is unlikely to be repeated;*
- References and testimonials from any work undertaken whether it be paid or unpaid especially in a health care setting, for example as a carer;*
- Evidence of ongoing training and development, such as online courses where registration is not a requirement; and*
- Your continued engagement with the NMC.'*

The panel had regard to the fact that, although Miss Chomicka had acknowledged in her email dated 12 October 2020 that she had received this information, she had not provided the panel with any of the items suggested.

In light of Miss Chomicka's failure to demonstrate sufficient insight or remediation into her misconduct, the panel determined that it was necessary to take action to prevent Miss Chomicka from practising in the future. Miss Chomicka had been provided with an opportunity, by the substantive panel to engage with these proceedings and provide evidence of insight and remediation. No such engagement has occurred. Miss Chomicka has not rectified her failings and remains a risk to the public. Furthermore the panel was of the view that the misconduct in this case was very serious. It considered honesty to be an integral characteristic of any nurse, and as such determined that public confidence in the NMC and nursing profession would be undermined if Miss Chomicka was not removed from the Register. It concluded that the

only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 23 December 2020 in accordance with Article 30(1).

This decision will be confirmed to Miss Chomicka in writing.

That concludes this determination.