

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

**Substantive Order Review Meeting
Monday 30 November 2020**

Virtual Meeting

Name of registrant: Elaine Anne Hastings

NMC PIN: 05B0018S

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 20 February 2008

Area of registered address: Ayrshire

Type of case: Misconduct

Panel members: Suzy Ashworth (Chair, lay member)
Carla Hartnell (Registrant member)
Gregory Hammond (Lay member)

Legal Assessor: Oliver Wise

Panel Secretary: Catherine Acevedo

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Striking-off order to come into effect at the end of
14 January 2021 in accordance with Article 30(1)

Decision 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 Conduct and Competence Committee or the Health 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—

...

(b) electronic mail to an electronic mail address that the person has notified to the Council as an address for communications.”

The letter of notice of this substantive meeting was sent to Mrs Hastings’ email address on the register on 21 August 2020. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

Decision and reasons on review of the substantive order

The panel decided to replace the suspension order with a striking off order.

This order will come into effect at the end of 14 January 2021 in accordance with Article 30(1) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the second review of a substantive suspension order originally imposed by a Fitness to Practise panel on 14 December 2018 for 12 months. This order was reviewed on 4 December 2019 and a further suspension order was imposed for a period of 12 months.

The current order is due to expire at the end of 14 January 2021.

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 a date unknown between August and September 2016 locked Patient A’s door while he was inside the room.*
- 2. On the night shift of 14 September 2016;*
 - 2.1 You put a linen basket in front of Patient A’s door*
 - 2.2 At approximately 00:00-00:30 you held Patient A’s door closed*
 - 2.3 You did not provide continuous 1:1 supervision of Patient A and/or ensure that continuous 1:1 supervision was provided*
 - 2.4 You did not complete a Datix*
 - 2.5 You did not ensure that an accurate record was kept of Patient A’s behaviour*

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

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

“The panel considered whether Mrs Hastings’ fitness to practise remains impaired.

The panel noted the previous panel’s findings in relation to Mrs Hastings’ lack of remediation and ‘very limited insight’. Mrs Hastings has not engaged with the NMC since the hearing in December 2018. As such, today’s panel has no new information before it to determine whether Mrs Hastings’ insight had developed in the last year or whether she had taken any steps to remediate the misconduct found proved.

The last panel determined that Mrs Hastings was liable to repeat matters of the kind found proved. This panel has received no information to undermine that position, despite recommendations by the substantive panel as to what today's panel would be assisted by. In light of this the panel determined that Mrs Hastings 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 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 Mrs Hastings' fitness to practise remains impaired”.

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

“Having found Mrs Hastings' 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 29 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 allow the current order to lapse or to impose a caution order but concluded that neither option would be appropriate 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 allow the current order to lapse or to impose a caution order.

The panel next considered replacing the current suspension order with a conditions of practice order. However, the panel had no information before it to determine that Mrs Hastings would be willing to comply with conditions of practice. The panel

therefore determined that such an order would not be practical or proportionate at this time.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Hastings further time to fully reflect on her previous failings. It considered that Mrs Hastings needed to gain a full understanding of the impact her misconduct had upon the nursing profession, her colleagues, employer, patients and patient's families. The panel concluded that a further 12 month suspension order would be the appropriate and proportionate response.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. Any future panel may be assisted by evidence of:

- a detailed reflective statement on the impact of her behaviour on patients, patients' families, the public, and the nursing profession*
- evidence of recent training in relation to record keeping and caring for patients with aggressive and challenging behaviour*
- training on human rights and the deprivation of liberty*
- testimonials from employers and colleagues in any paid or unpaid work”.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Hastings' 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.

The panel accepted the advice of the legal assessor, who referred the panel to the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* in relation to impairment, and to the NMC's Sanctions Guidance (SG) in relation to sanction.

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 Mrs Hastings' fitness to practise remains impaired.

The panel noted that Mrs Hastings has not engaged with the NMC since January 2018. This panel has no new information before it to determine whether Mrs Hastings' insight has developed since the substantive hearing in December 2018 or whether she had taken any steps to remediate the misconduct found proved.

The last panel determined that Mrs Hastings was liable to repeat matters of the kind found proved. This panel has received no information to change that position, despite detailed recommendations by the last reviewing panel as to what today's panel would be assisted by, including a reflective statement from her, details of specific training undertaken and testimonials from employers and colleagues. In light of the absence of any of this material the panel determined that Mrs Hastings 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 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 Mrs Hastings' fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Hastings' 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 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 allow the current order to lapse or to impose a caution order but concluded that neither option would be appropriate in view of the risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to allow the current order to lapse or to impose a caution order.

The panel next considered replacing the current suspension order with a conditions of practice order. However, the panel had no information before it to determine that Mrs Hastings would be willing to comply with conditions of practice. The panel therefore determined that such an order would not be practicable or appropriate at this time.

The panel next considered imposing a further suspension order. The panel noted that Mrs Hastings has not engaged with these proceedings and has not demonstrated any insight into her previous failings. The panel took into account the previous reviewing panel's suggestions for what Mrs Hastings should provide which were as follows:

- *a detailed reflective statement on the impact of her behaviour on patients, patients' families, the public, and the nursing profession*
- *evidence of recent training in relation to record keeping and caring for patients with aggressive and challenging behaviour*
- *training on human rights and the deprivation of liberty*
- *testimonials from employers and colleagues in any paid or unpaid work".*

Mrs Hastings has failed to respond to these recommendations.

The panel was of the view that considerable evidence would be required to show that Mrs Hastings no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Hastings 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 14 January 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Hastings in writing.

That concludes this determination.