

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

**Substantive Order Review Hearing
9 November 2020**

Virtual Hearing

Name of registrant: Priscila R. Rubb

NMC PIN: 02J08360

Part(s) of the register: Registered Nurse
Adult Nursing – October 2002

Area of registered address: Lancashire

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, lay member)
Pamela Campbell (Registrant member)
Gillian Seager (Lay member)

Legal Assessor: Patricia Crossin

Panel Secretary: Ruth Bass

Nursing and Midwifery Council: Represented by Jessica Bass, Case Presenter

Mrs Rubb: Present and unrepresented

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: Strike off order to come into effect immediately in accordance with Article 30(2)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Bass made a request that matters relating to your health be held in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You confirmed that you would like any matters relating to your health to be held in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined that it would be in your interest to hear any matters relating to your health in private.

Decision and reasons on review of the substantive order

The panel decided to impose a strike off order. This order will come into effect immediately in accordance with Article 30(2) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 14 November 2013, as a 12 month suspension order. On 11 November 2014 the order was reviewed and changed to conditions of practice. This order was reviewed and maintained on 12 November 2015. A further review took place on 11 November 2016, where a further conditions of practice order was imposed. The order was reviewed again on 3 November 2017 and a conditions of practice order was imposed for 18 months. The order was reviewed again on 13 June 2019 and the conditions of practice order was extended for a further 18 month period. The current order is due to expire at the end of 16 December 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, whilst employed by the Pennine Acute Hospitals NHS Trust ("the Trust") as a band 5 Staff Nurse at Fairfield General Hospital, working on Ward 10 on 11 May 2011:

1. In relation to Patient A's medication, at approximately 17:00, administered:

- a) an infusion of Morphine instead of Noradrenaline;*
- b) more than the prescribed dose of Morphine.*

2. Did not ensure that the infusion being administered to Patient A at 17:00 was checked by another member of staff;

3. Did not ensure clear and visible labelling of the drug being administered to Patient A.

4. Did not carry out appropriate observations of Patient A, before and/or during and/or following administering medication to Patient A;

5. Prepared 50ml/50mg syringe of Morphine in advance of it being required and/or the line being replaced.

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

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

'The panel considered whether your fitness to practise remains impaired.

Regarding your insight, the panel noted that the last panel found that your insight had deteriorated and that you did not recognise your responsibility to remedy the

defects in your practice. At this hearing the panel found that you showed limited insight and did not provide a reflective piece to show full insight into your clinical failings.

The panel determined that it agreed with the last reviewing panel that you have not shown any evidence of remediation. The panel did take into consideration the health issue you have faced in the last 6 months, which has hindered your ability to access a return to practice course. The panel determined that there is a real risk of repetition of your clinical failings. 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 fifth reviewing panel determined the following with regard to sanction:

The panel next considered the extension of the current conditions of practice order. The panel was of the view that the current conditions of practice order is sufficient to protect patients and the wider public interest, noting as the reviewing original panel did that there was no deep seated attitudinal problems and that conditions could be formulated which would protect patients during the period they are in force.

The panel considered a suspension order, however it noted that you were engaging with the NMC and whilst it could impose a suspension order, this would not enable you to remedy the failings found in your practice.

The panel seriously considered whether the time has come for a striking off order. It noted that the original misconduct found proved had occurred in 2011 and that despite being on conditions of practice since November 2014 your practice has still

remained impaired. The panel noted that you had continued to engage with the NMC and had taken some steps to remedy your practice however a conditions of practice order was not meant to be indefinite.

The panel acknowledged that you need to complete a Return to Practice course to revalidate your practice and to be able to comply with your conditions of practice order. The panel therefore determined that a conditions of practice order for 18 months will give you further time to complete a Return to Practice course, then to practise as a nurse, comply with your conditions and demonstrate that you are safe to practise in a clinical environment.

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 to impose the following conditions which it considered are appropriate and proportionate in this case:

- 1. You must not carry out medication administration unless supervised by a registered nurse until such time as you have been signed off as competent by a registered nurse.*
- 2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in medication administration.*
- 3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every two months to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
- 4. 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.*

5. *You must immediately inform the following parties that 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 4 above, to them:*
- *Any organisation or person employing, contracting with, or using you to undertake nursing work*
 - *Any agency you are registered with or apply to be registered with (at the time of application)*
 - *Any prospective employer (at the time of application)*
 - *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)*
6. *You must notify the NMC within seven 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 inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*
8. a) *You must within seven 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.*

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

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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 an email from you dated 5 November 2020 setting out the E-learning courses you have undertaken. It has taken account of the submissions made by Ms Bass on behalf of the NMC. Ms Bass told the panel that you had made little progress in securing work as a nurse. She said that previous panels had given you a clear indication that a strike off order was a real possibility. Ms Bass informed the panel that you indicated you were due to start a Return to Practice Course in September 2019, and that you were given an 18 month conditions of practice order to accommodate undertaking a Return to Practice Course. You have not done this. Ms Bass submitted that there is a persuasive burden on you to demonstrate that past deficient performance had been remedied. You have undertaken some mandatory online training which related to your work as a healthcare assistant but your misconduct relates specifically to medicine administration. You have undertaken one mandatory course called 'Medication', but without a period of safe and efficient practice there is no evidence to conclude that your fitness to practise is not impaired.

With regard to sanction Ms Bass stated that the two previous panels had been very clear that a strike off order would be a real possibility for a reviewing panel. Ms Bass submitted that there has not been sufficient progress since the last review. She reminded the panel that you have not worked as a nurse since 2011, although you have been working in healthcare assistant/caring roles. She submitted that you have not been able to provide

any other indication of steps taken to remediate your misconduct, despite several opportunities and clear guidance of what would help you remediate. She left the matter of sanction for the panel to determine.

The panel also had regard to your oral evidence. You told the panel that you had provided the outcome of the hearing to your manager at the hospital where you were employed, and pointed out the conditions. You were not assisted in complying with the order by your then employer. You were not given a mentor and there was no one to supervise your work. You said that the conditions you were given were not honoured by your employer and you were told that you had to work as a healthcare assistant which is what you have been doing. You were told by your previous employer that you could not work for them as a nurse. You believed that your registration as a nurse was not effective. You therefore incorrectly believed that you could not access e-learning for nurses as you would have to state you were a nurse and believed you were not. You felt unsupported by your employer and did not know how to comply with the conditions of practice order based on what you had been told.

You were dismissed from the hospital in December 2019 and went back to a previous job as a carer with an agency. You have undertaken all the required E-learning and are 100% compliant with this. You currently work 50 hours a week in this role. You stated that you had approached a nurse practitioner, but no-one was able to tell you what to do and you felt as though you were in limbo. You are aware that you need to do Continuing Professional Development (CPD) and revalidate, but did not see how you could do it as you did not have access to any E-learning nursing courses.

You told the panel that you would really love to get back to nursing practice, and study. You wish to rectify the errors that were made and to do this you would like to go back to a nursing environment with supervision. You asked the panel for one last chance.

You told the panel that you wished to apply to undertake the Return to Practice Course at a hospital in Halifax. You had not applied yet because you did not know your standing as a nurse, but now that you know, you would be able to fully express to them why you need to undertake the programme.

Upon Ms Bass hearing your evidence that you believed you were not allowed to work as a registered nurse, she provided the panel with the NMC guidance entitled 'Returning to Practice, which came into force on 5 November 2019. Ms Bass pointed out that this guidance came into effect since your last review hearing. She confirmed the NMC's position that you would be able to apply for work as nurse, whilst the conditions of practice order was in place, despite you not having undergone the revalidation process.

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 accepted that you were under the impression that you could not work as a nurse. However, it noted that there had been no change with regard to your insight or remediation since the last review hearing. Despite your confusion, you took no steps within the 18 months to contact the NMC for clarification or assistance. The panel acknowledged that you remained remorseful for your actions and for the impact your misconduct had upon Patient A. However, you have failed to demonstrate an understanding of how the misconduct occurred, or what you would do differently if the same circumstances were to arise in the future. The panel therefore found your insight to be lacking. You have not provided any evidence of reflection to this panel regarding your misconduct, which could have been provided without the need to work as registered nurse.

With regard to remediation, the panel acknowledged that you had undertaken the mandatory training associated with your role as a carer, but noted that you had not done any further training of your own volition in relation to the misconduct identified. It acknowledged that you had undertaken an E-learning course entitled 'Medication'. However, it had no information as to what this course entailed.

Further the panel noted that you have now been out of nursing practice for some 9 years. It was of the view that it was probable that your nursing skills would have diminished

during this period of time, and even more so as time further elapsed. You have not applied to undertake a Return to Practice Course, despite informing 2 previous panels that you intended to do so.

In light of your failure to demonstrate sufficient insight and the fact that you have not remediated your misconduct, the panel determined that there remains a real risk of repetition of the misconduct 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 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 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 your misconduct, and the public protection issues identified, 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 conditions of practice 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 reminded itself that conditions of practice are supposed to be set to achieve the objective of your safe return to practice. They are not supposed to be in place indefinitely. The panel was of the view that you are no further forward today than when the first conditions of practice order was given to you on 11 November 2014. In the absence of any evidence of progress, and the length of time that has elapsed, the panel felt it highly unlikely you would be able to meet any existing or further conditions of practice. It felt that a further period of conditions would serve no useful purpose. The panel had regard to the fact that you have not taken any steps to remediate the misconduct identified in this case, despite this being the sixth review hearing. It acknowledged that you were under the impression that you could not work as nurse. However, the panel was of the view that your inaction in this area evidenced a lack of professionalism and effort on your behalf to do what is required of you to return to practice. You indicated that you would be undertaking a return to practice course, and have failed to apply for any places to date, despite being told by the last two previous occasions that a strike off order was likely to be considered. You have not provided any testimonials from your current place of work, evidence of journals read, or provided a reflection on past events; the panel was of the view that these were all efforts that could have been undertaken by you despite not being in a nursing role. In light of your 9 years out of practice, and no evidence of you having kept up to date with your nursing skills, the panel was of the view that it would not be possible to formulate conditions of practice to address your deficiencies as nurse, as this would now go far beyond the original misconduct identified. In light of the above, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. In considering this option, the panel was mindful that you had already received a suspension order, and a further suspension would not provide you with an opportunity to remediate your misconduct. The panel do not consider that the public interest would be served by imposing a further period of suspension. In these circumstances the panel determined that a period of suspension would not serve any useful purpose.

The panel determined that it was necessary to take action to prevent you from practising and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel is satisfied that this striking-off order is proportionate and will maintain public confidence in the profession. The panel therefore directs the registrar to strike your name off the register.

This striking-off order will take effect immediately, in accordance with Article 30(2). For the reasons set out above, the panel could see no justification in allowing the current conditions of practice order to remain in place until expiry of the order.

This will be confirmed to you in writing.

That concludes this determination.