

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

**Substantive Meeting
19 October 2020**

Virtual Meeting

Name of registrant: Aimee Jones

NMC PIN: 17B1046E

Part(s) of the register: Registered Nurse
Adult Nursing (13 September 2017)

Area of registered address: West Sussex

Type of case: Misconduct

Panel members: Nigel Hallam (Chair, Lay member)
Mary Scattergood (Registrant member)
Jan Bilton (Lay member)

Legal Assessor: David Marshall

Panel Secretary: Roshani Wanigasinghe

Facts proved: All

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on proof of service

The panel considered whether notice of this meeting has been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”).

The panel accepted the advice of the legal assessor.

The panel noted that notice of this substantive meeting was sent to Miss Jones by email on 9 September 2020 to her email address on the register. The notice informed Miss Jones that a panel of the Fitness to Practise Committee would hold a meeting to consider her case on or after 19 October 2020. The notice included the charges which the panel would consider at the meeting, as well as informing Miss Jones that the panel would consider whether her fitness to practise is currently impaired as a result of those charges and, if so, whether a sanction is required. Miss Jones was asked to provide any relevant responses or documents for the panel by 9 October 2020.

In these circumstances, the panel was satisfied that the notice was sent at least 28 days in advance of this meeting and had been served in accordance with the Rules. The panel noticed an error in the record of the decision made at the Notice of Referral meeting on 19 September. It said that ‘there would be a great public interest in this case’. That would normally be a reason for holding a hearing rather than a meeting. However, it was clear that several words had been left out of the letter and the panel was satisfied that the matter was properly referred to a meeting. There was no basis for thinking that there would be great public interest in this case. The panel also considered that it was appropriate to consider this matter at a meeting, as Miss Jones has not requested a hearing and indicated on 9 September 2020 that she had “chose[n] back last year not to attend meetings and to let it go on with whatever the outcome is. I would only really like to be contacted now just to let me know what the outcome of the meeting is.”

The panel therefore proceeded to consider Miss Jones’ case at a meeting.

Details of charge

That you, a registered nurse;

1. On the night shift of 31 March 2018, you;

1.1.failed to carry out any observations on one or more of the patients under your care;

1.2.recorded patient observations on the Vital Pacs when observations had not been carried out;

2. On an unknown date/s between January and 31 March 2018, you on one or more occasions:

2.1.failed to carry out observations on one or more of your patients;

2.2.recorded that patient observations had been carried out when they had not;

3. Your actions at charges 1.2 and 2.2 above were dishonest in that you attempted to give the appearance that you had undertaken observations when you knew you had not.

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

Background

The NMC received a referral from Queen Alexandra Hospital Portsmouth on 23 July 2018 raising concerns about Miss Jones following an incident that occurred whilst Miss Jones was working a night shift.

Miss Jones was employed as a Band 5 Registered Nurse since September 2017 and was working on a 30 bedded respiratory ward.

On the night shift of 31 March/1 April 2018 Miss Jones admitted that she had not taken the observations she was meant to take and instead had falsified patient records. The records were discovered on 1 April 2018 with Miss Jones having made her admissions on the same day.

Miss Jones was subsequently suspended and during the course of the Trust investigation admitted that she had been falsifying patient records over a period of several months but could not recall which shifts.

Miss Jones has not worked as a nurse since the incident.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Colleague 1, a Staff Nurse, at the Hospital;
- Colleague 2, a Charge Nurse at the Hospital;
- Colleague 3, a Matron at the Hospital;
- Colleague 4, a Charge Nurse at the Hospital;
- Colleague 5, a Ward Manager at the Hospital.

The panel also had sight of statements from Miss Jones.

Before making any findings on the facts the panel considered the documentary evidence adduced in this case and accepted the advice of the legal assessor. He advised that the issue of dishonesty was a question of fact. The NMC had to prove what Miss Jones did ('recorded that patient observations had been carried out when they had not') and what her state of mind was when she did it. Once that was done it was for the panel to decide whether what was done, in that state of mind, was dishonest applying the standards of ordinary decent people. [PRIVATE]. The panel made the following findings:

Charge 1

1. On the night shift of 31 March 2018, you;

1.1.failed to carry out any observations on one or more of the patients under your care;

1.2.recorded patient observations on the Vital Pacs when observations had not been carried out;

This charge in its entirety is found proved.

In reaching this decision, the panel took into account all of the evidence before it, particularly the witness statements of Colleagues 1,2,3,4 and 5.

The panel noted that all the witness statements describe the same account and that Miss Jones in her statement at the local investigation states:

“My manager states it was brought to her attention by other members of staff that although the Vital Pac’s had been recorded, the patients observations had not been done, whilst in my care.

I admitted to this freely, and was ashamed of what I had done, and how I put my patients at risk...”

The panel had regard to the Incident Report (Datix) containing details of the times and dates in which Miss Jones’ colleagues had raised concerns regarding Miss Jones’ conduct and omissions. The panel also considered the Local Investigation Report.

The panel considered that there was sufficient evidence to prove that Miss Jones, on the night shift of 31 March 2018, failed to carry out any observations on one or more of the patients under her care and she recorded patient observations on the Vital Pacs when observations had not been carried out.

The panel therefore found charge 1, in its entirety, proved.

Charge 2

2. On an unknown date/s between January and 31 March 2018, you on one or more occasions:

2.1.failed to carry out observations on one or more of your patients;

2.2. recorded that patient observations had been carried out when they had not;

This charge in its entirety is found proved.

In reaching this decision, the panel took into account all of the evidence before it, particularly the witness statements of Colleague 3 and Colleague 5 and the Local Investigation Report.

The panel had regard to Colleague 3's witness statement in which she states that:

"The Registrant has also provided a statement confirming that she had been falsifying records sporadically over the course of approximately three months

...

Thereafter, the matter was escalated to the internal patient safety team who has to revisit three months worth of observations for each patient on the Ward.

Their investigation was completed and it confirmed that the Registrant's actions has not caused any patient harm."

The panel also noted that Miss Jones in her statement at the local investigation stage stated:

"This has only been happening over the last few months as I feel the pressure has been mounting on me and I didn't feel I could discuss this with anyone else as I was ashamed of what was happening.

...

I stated to [another colleague] the head of nursing that these incidents didn't happen on every shift I have been working over the last few months, I wanted to make it clear that I have done observations on my patients but I don't know why I would not do them at other times..."

The panel considered that there was sufficient evidence to prove that Miss Jones on an unknown date/s between January and 31 March 2018, on one or more occasion, failed to carry out observations on one or more of her patients and she recorded that patient observations had been carried out when they had not.

The panel therefore found charge 2, in its entirety, proved.

Charge 3

3. Your actions at charges 1.2 and 2.2 above were dishonest in that you attempted to give the appearance that you had undertaken observations when you knew you had not.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, particularly the witness statements of Colleagues 1,2,3,4 and 5.

The panel considered Colleague 1's witness statement in which she states:

"...I asked the Registrant how her shift had been, She stated that it had been fine. I then asked her whether she had carried out her patient observations to which she replied that she had. I asked her which machine she had used to carry out the observations to which she replied that she 'could not remember'. Then stated that I had asked the patients and they have informed me that she had not carried out any observations. The Registrant proceeded to inform me that she had carried them out

before went onto her break at 4.00am to which I told her that it was bad practice to record patient observations at a later point as they would not be an accurate reflection of the patients statistics, during that period many things can change.... At this point the Registrant confessed that she had not carried out any of the observations. The Registrant stated that she had merely inputted the previous observations readings for the patients.”

The panel also had regard to Colleague 2’s witness statement in which he said:

“I again asked both [Colleague 1] and the registrant whether there was anything they would like to report or anything they needed assistance on. The registrant said she was fine and did not need any help. I then spoke to [Colleague 1] who stated that she was happy to ask the registrant if she had been carrying out her observations. [Colleague 1] stated that she asked the Registrant whether she had, to which the Registrant outright stated that she had not... [Colleague 1] informed me of what the Registrant had said and I proceeded to confirm this with the Registrant. She confirmed that she had not carried out any observations but could not explain why.”

The panel also had regard to Colleague 3’s witness statement in which she said:

“I began the meeting by asking the Registrant for her account. She informed me that she did not carry out any observations and had just inputted new observations by looking at the previous readings.”

The panel bore in mind that this was deliberate conduct, which persisted for several months in relation to multiple patients. It was of the view that to record vital signs which she had not undertaken was dishonest conduct. The panel noted that when Miss Jones was initially challenged about this, she admitted to her conduct. This was not just a case of a nurse signing a record to say she had made observations when she had not. Miss Jones went back over previous patient records and used the historic entries to manufacture

current records. This showed planning and pre-meditation. Her act of using old records was evidence of her attempt to conceal her failure to take observations by dishonesty.

The panel concluded that Miss Jones' actions at charges 1.2 and 2.2 above were dishonest in that she attempted to give the appearance that she had undertaken observations when she knew she had not.

The panel therefore found charge 3, proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct, and if so, whether Miss Jones' fitness to practise is currently impaired by reason of her misconduct. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Jones' actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of

the Code. The panel agreed with the NMC's statement of case, that the following provisions of the Code apply. Specifically:

Practice effectively

10 Keep clear and accurate records relevant to your practice

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

Promote professionalism and trust

...You should be a model of integrity ...for other to aspire to...

20 Uphold the reputation of your profession at all times

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the dishonesty found proved was serious and involved Miss Jones' clinical practice and a deliberate avoidance of crucial tasks for multiple patients on multiple occasions. It was of the view that the fabrication of fictitious results to conceal the fact that she had not undertaken the critical observations for her patients was very serious.

The acts and omissions by Miss Jones on the dates in question placed large numbers of vulnerable patients at risk of significant harm.

The panel found that Miss Jones' actions did fall seriously below what would have been proper in the circumstances and also fell below the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Jones' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all four limbs in Grant are engaged in this case.

The panel finds that patients were put at risk of significant harm as a result of Miss Jones' deliberate avoidance of undertaking crucial observations for patients who were acutely unwell and then fabricating results to conceal the fact that observations had not been carried out. The panel also found that Miss Jones' dishonest actions had breached the fundamental tenets of the nursing profession and therefore brought the reputation into disrepute and that her actions had serious ramifications for those involved. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that Miss Jones was not fully honest about her conduct and omissions at the initial interview. The panel further noted that, Miss Jones, in her responses to the regulatory concerns document, seeks to place blame [PRIVATE] difficult working environment and that there was a lack of fully accepting personal accountability for her conduct. It was of the view that Miss Jones had focused primarily on how her actions had impacted upon herself. Miss Jones did not appear to recognise how her actions have brought the nursing profession into disrepute, and shows little understanding how her actions could have had serious ramifications on patients and colleagues at the

Hospital. However, the panel acknowledged that since the initial interview, Miss Jones had demonstrated some very early signs of insight into her misconduct and dishonesty, and the seriousness and impact of her conduct, but from the evidence currently before it, the panel considered Miss Jones' insight to be very limited.

The panel was of the view that misconduct involving dishonesty is inherently difficult to remediate. The panel found that there was no information about Miss Jones' current circumstances and she presented no evidence about how she plans to develop her insight and remediate her misconduct.

In the light of Miss Jones' apparently limited insight, lack of remediation and remorse, the panel is of the view that there is a risk of repetition. 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.

Given the gravity of the misconduct the panel decided that a finding of impairment on public interest grounds is required. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore finds Miss Jones' fitness to practise impaired on the grounds of public interest.

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

Decision and reasons on sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Jones' name off the register. The effect of this order is that the NMC register will show that Miss Jones has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case.

The panel accepted the advice of the legal assessor.

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel took into account the following aggravating features:

- Multiple patients placed at serious risk of harm from conduct and behaviour;
- Repeated, long standing and premeditated deception;
- Vulnerable patients;
- Lack of insight into failings;
- Pattern of misconduct over period of time;
- Put her registrant colleagues in a vulnerable position and caused potential impact to their professional reputation.

The panel also took into account the following mitigating features:

- [PRIVATE]

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. 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 Jones' 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 Jones' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 whether placing conditions of practice on Miss Jones' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct in this case was not something that can be addressed through retraining or by conditions of practice. The panel noted that there were no identifiable areas of concern involving Miss Jones' clinical nursing practice, which needed to be addressed. Miss Jones' actions were deplorable, and conditional registration would not adequately reflect the seriousness of this case, having regard to Miss Jones' misconduct and dishonesty. The panel had serious concerns regarding Miss Jones' attitude and conduct. Furthermore, the panel concluded that the placing of conditions on Miss Jones' registration would not be proportionate, would not adequately address the seriousness of this case, would not sufficiently protect the public, nor address the public interest considerations in this case.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*
- ...

The panel noted that the dishonesty occurred in a clinical setting and Miss Jones' actions of deliberate avoidance of undertaking crucial observations for patients who were acutely unwell and then fabricating results to conceal the fact that observations had not been carried out placed patients at a significant risk of harm. Miss Jones' dishonesty was not a single incident but persisted over a period of time. Miss Jones' breached her duty of candour. The public and profession placed trust in Miss Jones' to act with honesty and with integrity. The panel considered that Miss Jones' insight, remorse and remediation was limited and that her dishonesty was very serious and is fundamentally incompatible with her remaining on the register.

The panel decided that imposing a suspension order in this case would undermine public trust and confidence in the profession and undermine its reputation and that of the regulator. In all these circumstances, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

In considering a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Miss Jones' dishonest actions were significant departures from the standards expected of a registered nurse. The panel concluded these are fundamentally incompatible with her remaining on the register. The panel was of the view that Miss Jones' dishonest actions and omissions, taking place in a clinical setting, were so serious that to allow her to remain on the NMC Register would undermine public confidence in the profession and in the NMC as a regulatory body.

Having regard to the overarching objectives of the NMC and the public interest, and the effect of Miss Jones' misconduct in bringing the profession into disrepute, the panel concluded that nothing short of striking off would be sufficient or proportionate in this case. Balancing all of these factors and after taking into account all the evidence before it, the panel decided that the appropriate and proportionate sanction is a striking-off order.

The panel considered that a striking off order was necessary to maintain public confidence in the profession by upholding and declaring proper standards. It will also send an appropriate message to both the public and the profession about the standards of behaviour expected and required of a registered nurse.

This decision will be confirmed to Miss Jones in writing.

Decision and reasons on on interim Order

The panel accepted the advice of the legal assessor.

The panel considered the imposition of an interim order and determined that an interim order is necessary for the protection of the public and it is otherwise in the public interest.

The panel determined that an interim conditions of practice order was inappropriate given its earlier findings.

The panel was satisfied that an interim suspension order is necessary in the circumstances of this case. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking-off order 28 days after Miss Jones is sent the decision of this hearing in writing.

That concludes this determination.