

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

**Substantive Order Review Hearing
23 September 2020**

Virtual Hearing

Name of registrant: Matthew Patrick Brannigan

NMC PIN: 10K1468E

Part(s) of the register: Registered Nurse – Sub part 1
RNA: Adult Nursing – 21 February 2011

Area of registered address: England

Type of case: Lack of competence

Panel members: Andrew Galliford-Yates (Chair, Registrant member)
Colin Sturgeon (Lay member)
Rachel Louise Jokhi (Registrant member)

Legal Assessor: Attracta Wilson

Panel Secretary: Simran Saini

Nursing and Midwifery Council: Represented by Michael Smalley, Case Presenter

Mr Brannigan: Present and not represented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (2 years) to come into effect at the end of 29 October 2020 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect at the end of 29 October 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order, originally imposed by a Fitness to Practise Committee on 25 September 2017 for a period of 12 months. The order was first reviewed on 20 September 2018 when a further suspension order for a period of 12 months was imposed. It was reviewed again on 18 September 2019 when the suspension order was extended for a further six months. The third review took place on 31 January 2020 when the order was extended again for a further six months.

The current order is due to expire at the end of 29 October 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 as a registered nurse on the 'Out of Practice/Return to Practice Programme' ("OOP") at Nottinghamshire Healthcare Trust ("the Trust"), between approximately 14 March 2016 and 31 July 2016, failed to demonstrate the standards of knowledge, skill and judgement needed to complete the OOP and meet the competencies of a Band 5 nurse, in that:

- 1. On or about 14 March 2016 you were unable to attach a catheter bag to a patient's leg with a Velcro strap.*
- 2. On one or more occasions you were unable to use a hoist sling to lift a patient, despite having been repeatedly shown how to use the hoist and/or having undertaken manual handling training.*

3. *On a date in or around March or April 2016, you inappropriately placed a patient's heel, which had a Stage Three pressure ulcer, in direct contact with a stool, rather than elevating the heel over the stool to relieve the pressure.*
4. *On or about 17 April 2016, you failed to take adequate action when a patient collapsed, in that you:*
 - 4.1. *did not pull the emergency bell;*
 - 4.2. *stood back when Mr 1, Band 3 Senior Healthcare Assistant, came over to see the patient;*
 - 4.3. *did not assist Mr 1 to move the patient onto her bed, despite Mr 1 asking you to do so;*
 - 4.4. *did not retrieve the blood pressure machine, despite Mr 1 asking you to do so;*
 - 4.5. *stated to Mr 1, words to the effect to that, you did not know where the blood pressure machine was.*
5. *In May 2016, you were unable to carry out one or more patient handovers to Mr 1 beyond providing Mr 1 with the information which was already written on the handover sheets.*
6. *On or about, 5 May 2016, you gave a patient a plate of dinner without having adequately checked the transfer sheet for the patient's dietary needs.*
7. *On one or more dates when Ms1, Band 5 Nurse, asked you to complete a social work referral form including details of the names and/or addresses of the patient's next of kin, you refused to do so without Ms 1's supervision and/or despite having been shown how to do so.*
8. *On one occasion when Ms 1, Band 5 Nurse, asked you to prepare a non-complex dressing for a patient, you stated, words to the effect that you needed Ms 1's supervision, when you had previously done such a dressing before under supervision and/or had been assessed as competent to do this type of dressing.*

9. *On or about 15 May 2016, when Ms 1, Band 5 Nurse, asked you to carry out a bladder scan on a patient:*

9.1. *you were unable to do so without supervision;*

9.2. *after Ms 1 started to supervise you, you did not know how to turn on the machine and/or know where to put the probe, despite being shown how to carry out the scan previously;*

10. *On or about 15 May 2016, in response to a question from Ms 1 regarding administering an enema and/or carrying out a rectal exam on a patient, you stated words to the effect that;*

10.1. *you had given an enema and/or carried out a rectal exam previously; and/or*

10.2. *you would lie the patient on their right side to carry out an enema, when you knew or ought to have known this could result in a perforated rectum.*

12. *After 23 May 2016:*

a) *you started working at below a Band 2 level;*

b) *on one or more occasions you had to check with a Health Care Assistant whether you needed to undertake patient observations.*

13. *On or about 29 June 2016, at another meeting to discuss your progress with the OOP, you stated, words to the effect, that there was nothing wrong with your practice.*

14. *You were unable to satisfactorily complete the OOP and/or meet the competencies of a Band 5 nurse.*

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

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

'The panel considered whether your fitness to practise remains impaired. It noted that you have provided an up-to-date reflective piece. The panel was of the view that this did show some development of insight into the charges found proved, but considered that there were still significant deficiencies in your insight. Although you recognise that you made mistakes, neither your reflective piece nor your submissions to this panel demonstrated that you understand the implications of your lack of competence on your patients, the public or the wider nursing profession. The panel was not reassured that you understand the seriousness of your failings or that you have reflected on how you would do things differently in the future. The panel acknowledged that you want to put these matters behind you and move on with your career. However, it was not satisfied that you have yet learnt from your past mistakes or that you have yet acknowledged your own responsibility and accountability for remediation. While you told the panel that you want to re-train as a mental health nurse, you appear to be in the very early stages of exploring this career path and were unable to provide concrete examples of how you would go about pursuing this.

The panel acknowledged that you have continued to work within the healthcare sector and took account of the two positive testimonials before it. However, it was mindful that these related to your work as a healthcare assistant, not a registered nurse. It had no testimonials from any of your registered nurse colleagues, commenting on your transferrable skills. Although you told the panel that you have completed mandatory training, you provided no evidence of this, other than a verbal list of courses, but not the learning or development which had taken place. The panel also had no evidence of any training you have done to specifically address the concerns about your nursing practice, for example manual handling, pressure ulcer management, handover, or responding to emergency situations, all of which are transferrable to nursing practice.

In the absence of any further remediation or significant development of your insight, the panel determined that your fitness to practise remains impaired on the grounds of both public protection and public interest.'

The third 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. Taking no further action would not restrict your practice and therefore would not protect the public. The panel also decided that it would be neither proportionate nor in 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 for the same reasons.

The panel next considered imposing a conditions of practice order. The panel was mindful that while you are suspended you are unable to practise as a registered nurse, which makes it difficult for you to demonstrate that you can practise safely. However, after careful consideration the panel concluded that you are not yet at a stage where conditions of practice are practical and workable. The panel considered that it required greater reassurance that you have fully reflected on your shortcomings and learned from these before it could be satisfied that the public would not be put at risk by allowing you to practise with conditions.

The panel therefore moved on to a suspension order. It considered that a suspension order was the minimum required to protect the public at this time. It would also give you another opportunity to reflect further on your shortcomings, formulate a clear and robust plan for your future career intentions, and take steps towards achieving this.

The panel was mindful that more than two years have passed since your substantive hearing and, therefore, the option of a striking-off order was available to it. It considered this sanction but concluded that a striking-off order would be disproportionate at this time, given that you are engaging with your regulator, have expressed a desire to return to nursing, and have a commitment to healthcare,

evidenced by your positive testimonials. However, if you do not use this opportunity to take ownership of your remediation and cannot demonstrate proactive steps towards improving your practice and returning to nursing, then a future reviewing panel may decide that this is an appropriate sanction.

Accordingly, the panel decided that the appropriate and proportionate sanction at this time was a suspension order. It determined that a suspension order for 6 months was appropriate. This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 29 April 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.

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

- *A reflective piece which:
 - *demonstrates an understanding of the effect of your lack of competence on patients, the public and the wider nursing profession;*
 - *includes a clear and focused account of what you have done / intend to do in relation to the specific shortcomings identified in your practice.**
- *Testimonials from registered nurse colleagues who have knowledge of your practice as a healthcare assistant.*
- *Evidence of those aspects of training, learning and development you have undertaken in your current employment which are relevant to your practice as a registered nurse.'*

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 had regard to all of the documentation before it, including the NMC bundle and the detailed reflective piece provided by you. It has also taken into account the submissions made by Mr Smalley on behalf of the NMC and those made by you.

Mr Smalley briefly reminded the panel of the decisions of the substantive panel and the previous reviewing panels. In regards to current impairment, Mr Smalley invited the panel to consider whether, as of today, you have demonstrated sufficient insight into your previous mistakes and provided evidence of remediation. However, Mr Smalley reminded the panel that you have been suspended for over a period of two years and therefore have not worked as a registered nurse. He invited the panel to find that, in the absence of a period of supervised practice, your fitness to practise remains currently impaired.

Mr Smalley submitted that he remains neutral in regards to the sanction that this panel may impose, however he invited the panel to consider the aggravating and mitigating factors as found by the previous panels and also whether these factors still apply as of today's date. Mr Smalley submitted that your engagement today is an indication of your desire to continue practising as a registered nurse. However, in deciding which, if any, sanction to impose, he invited the panel to consider whether the public interest would be adequately addressed.

The panel also had regard to the submissions made by you.

You told the panel that for the last four years you have worked for a healthcare agency. During this time, you have worked in different nursing settings and realised that you have a true passion for nursing and would like to return to nursing practice. You told the panel that you have used this experience to your advantage, in that you are now confident of how you would do things differently in the future if faced with a similar set of circumstances. You also told the panel that by reflecting on your previous mistakes, you have targeted the areas which you need to improve on in order to ensure that you do not repeat the matters found proved at the substantive hearing.

You told the panel that you have undertaken mandatory training as part of your employment with the healthcare agency. You told the panel that you now realise where you went wrong and that you recognise that there is a certain standard of care that a patient and the wider public expects and that you fell short of those standards.

You told the panel that you are keen to return to nursing and that, moving forward, you would not put yourself or a patient in a situation which may have profound consequences. Upon panel questioning, you told the panel that should you be permitted to return to clinical practice that you would require quality preceptorship, protected time and a personal development plan to assist your return. You also said that you would be willing and accepting of a return to practise course and that you had already made enquiries about this.

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.

This panel noted that the last reviewing panel found that you had shown some development of insight into the charges found proved, but considered that there were still significant deficiencies in your insight.

At this hearing, the panel was of the view that your insight has improved significantly, in that you now recognise that your skills at the time of the allegations were lacking and fell short of the standards expected of a registered nurse. Having said that, the panel was not convinced that the clinical deficiencies, as identified at the substantive hearing, have been fully remediated. It recognised that you have done as much as you could have within the restrictions of a substantive suspension order. However it was of the view that you could have provided more specific examples of work that you have conducted in your current setting and demonstrated how that relates to the clinical concerns that had been identified at the substantive hearing. Although the panel was satisfied that the risk of repetition was

now lower than it might have been at the previous review hearings, it was not convinced that it could make a finding of no impairment as you have not been able to apply and demonstrate your knowledge as a registered nurse in a clinical environment since the imposition of the substantive order. As such, the panel determined that, in this case, a finding of continuing impairment on public protection grounds is required.

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 seriousness of the charges found proved. 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 charges found proved, 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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your clinical failings, the panel was of the view that there has been evidence produced to show that you have developed significant insight

since the last review hearing. The panel also noted your passion for and your wish to return to nursing.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime. As such, it decided to impose a conditions of practice order for a period of 24 months to allow you sufficient time to obtain employment and show compliance with the conditions of practice listed below.

The panel was also of the view that a conditions of practice order would give you the opportunity to demonstrate to the reviewing panel that your learning during the period of suspension could be transferred to the clinical setting. The panel was also of the belief that the order will provide you with the support needed to re-enter clinical practice safely and to address the public protection and public interest concerns in this case.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

‘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 limit your nursing practice to day duties only at one substantive employer in an NHS setting and you must not be the nurse in charge of a shift or floor;
2. You must ensure that you are working under the direct supervision of a Band 6 nurse or above at any time whilst working as a registered nurse.
3. You must work with your supervisor or their deputy to create a personal development plan (PDP). Your PDP must in particular address the following regulatory concerns:
 - a) Patient moving and handling;
 - b) Tissue viability;

- c) Assessing the acutely ill patient and escalation;
- d) Medicines administration and management – this must include undertaking a medications administration assessment; and
- e) Patient assessment, assessment of risk and patient handover;

You must also:

- a) Meet with your supervisor or their deputy every two weeks to discuss your progress towards achieving the aims set out in your PDP;
 - b) Send your case officer a copy of your PDP 28 days before any NMC review hearing; and
 - c) Send your case officer a report from your supervisor or their deputy 28 days before any NMC review hearing. This report must show your progress towards achieving the aims set out in your PDP.
4. You must keep us informed about anywhere you are working by:
- a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
5. You must keep us informed about anywhere you are studying by:
- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
6. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

- e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.
7. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for two years.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 29 October 2020 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. 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.