

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
1 – 2 September 2020

Nursing and Midwifery Council, Virtual Hearing

Name of registrant:	Moolchand Kumar Dyal
NMC PIN:	01B1056O
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (30 January 2001) Supplementary Nurse Prescriber (12 September 2015)
Area of Registered Address:	South Yorkshire
Type of Case:	Lack of Competence
Panel Members:	Raymond Marley (Chair, Lay member) Elaine Hurry (Registrant member) Colin Sturgeon (Lay member)
Legal Assessor:	Megan Ashworth
Panel Secretary:	Aoife Kennedy
Mr Dyal:	Present and represented by Josh Normanton, counsel, instructed by Blackfords LLP
Nursing and Midwifery Council:	Represented by Leeann Mohamed, Case Presenter
Order being reviewed:	Conditions of Practice Order (12 months)
Outcome:	Suspension Order (6 months) with a review, to come into effect upon expiry of the current order, namely, at the end of 4 September 2020, in accordance with Article 30 (1)

Decision and reasons on review of the current order:

The panel decided to impose a suspension order for a period of 6 months. This order will come into effect at the end of 4 September 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second effective review of a conditions of practice order, originally imposed by a Fitness to Practise panel on 3 August 2018 for a period of 12 months. The order was reviewed and extended for a further 12 months period on 20 August 2019. The current order is due to expire at the end of 4 September 2020.

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

The charges which resulted in the imposition of the substantive order were as follows:

Details of charge (un-amended):

That you, whilst employed as an Advanced Nurse Practitioner at Barnsley Hospital NHS Trust (“the Trust”) from 11 October 2015 to 1 January 2017:

1. ...
2. *On 1 May 2016 in respect of Patient A you:*
 - i. *Did not undertake a clinical examination prior to generating an electronic discharge letter*
 - ii. *Erroneously prescribed discontinued medication (aspirin and bisoprolol) by accessing a previous electronic discharge letter (“D1”) dated October 2015 and dragging the historic prescribed drugs onto the new prescription*

3. *Whilst subject to informal capability proceedings which commenced after 1 May 2016:*
 - a) *On 23 July 2016 you did not appropriately engage with the medical handover*
 - b) *On 27 July 2016 you:*
 - i. *Did not consider the needs of the Acute Response Team (“ART”) in that you were on the post take round when this was not your primary role*
 - ii. *Did not clerk and/or review a patient in the Surgical Decision Area (“SDA”) in a systematic manner*
 - c) *On 29 July 2016, you did not engage with and/or consider the needs of the Acute Response Team (“ART”)*
 - d) *On 31 July 2016, you*
 - i. *Did not review a patient when you were asked to do so by Doctor A*
 - ii. *Did not make any efforts to be present during the ward round*
 - iii. *...*
 - iv. *Reported an incorrect dosage of metformin to be prescribed to an unknown patient*
4. *Whilst subject to Stage 2 formal capability proceedings and an action plan from 26 September 2016 to 6 November 2016:*
 - a) *On 28 September 2016 you:*
 - i. *Were late for your shift resulting in you missing the anaesthetic handover*
 - ii. *Were hesitant in formulating a management plan for a patient and/or required prompts and direction*
 - iii. *Did not document your assessment of a patient in his notes and/or update the electronic database*
 - iv. *...*
 - v. *...*
 - vi. *Did not complete a mock treatment sheet for a patient when requested to do so*
 - b) *...*

- c) *On 13 October 2016 in respect of Patient B, you:*
 - i. *Failed to identify by means of clinical examination that Patient B was displaying symptoms of Abdominal Aortic Aneurysm (“AAA”)*
 - ii. *Your failure in respect of (i) above meant that his treatment was delayed*
- d) *On 24 October 2016 you:*
 - i. *Were late for your shift, missing ITU handover;*
 - ii. *Failed to update the electronic database in relation to patients and jobs required*
- e) *On 24 October 2016 in respect of an unknown patient, you:*
 - i. *Did not clerk the patient in a systematic manner*
 - ii. *...*
 - iii. *Conducted a poor handover to the Surgical Registrar*
- f) *On 24 October 2016 in respect of an unknown patient with suspected inflammation of the gall bladder you:*
 - i. *Did not check the patient for inflammatory markers*
 - ii. *Did not check within the A&E documentation whether antibiotics had been commenced;*
 - iii. *Did not identify that some bloods had not been requested by A&E and take steps to obtain them;*
 - iv. *Did not score the patient using a pancreatitis score sheet*
- g) *On 28 October 2016 in respect of a dementia patient, you did not appreciate why it was important for a nurse to introduce themselves and/or explain the procedure before a clinical examination*

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

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

“The panel was of the view that your oral evidence did not show full insight into the failings of your nursing practice and you have continued to blame external factors for some of your shortcomings. The panel was of the opinion that your oral

evidence mainly included general assertions about your working environment and current expectations of your employer rather than detailing how you have addressed the failings in your practice.

The panel noted that your current nursing role provides you with opportunities to address the concerns found in your practice and that you continue to be supported by the Practice.

The panel acknowledged the substantial training you have completed, your compliance with the conditions of practice order in attending supervision meetings regularly and bore in mind your intention to improve your nursing practice. However it was concerned that the report from your employer dated 7 August 2019 stated:

'We are sorry to say we have not seen any improvement in [Mr Dyall's] performance in relation to that before his interim one year audit. We do not believe he has achieved any of the milestones we expected of him with the yearlong supervision and we believe [Mr Dyall] should only be practicing under supervisory order for the foreseeable future, ideally for a period of 2 years at least. We believe that he could be potentially dangerous to patients with his practice as seen by the numerous diagnosis missed, inappropriate levels of investigation ordered , his consultation method and complaints coming through and in relation to his interactions with patients pertaining to prescribing, explaining the problems and his time management and some potential probity issues.'

In light of this, coupled with your limited insight, the panel concluded that your fitness to practise remains impaired.

The panel acknowledged that although some issues of probity have been raised, it does not have sufficient evidence before it to indicate that this is a concern which increases the level of risk to the public.

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 in the public interest as well as on public protection grounds is justified.

For these reasons, the panel concluded that a finding of current impairment remains necessary on the grounds of public protection.”

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

“The panel determined that continuing the current conditions of practice order for a period of 12 months would allow you further time to demonstrate your ability to practice safely, develop insight and provide a future panel with evidence of remediation.

The panel was satisfied that you would be able to comply with the current conditions of practice order which is known to be practical and workable.

The panel decided to continue the following conditions:

- 1. You must not practise as an ANP within an acute hospital setting or carry out any agency or locum work as an ANP.*
- 2. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to be by a GP and consist of weekly meetings to discuss your clinical performance.*
- 3. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:*
 - Patient assessment and diagnosis*
 - Prescribing*

- *Record keeping*
- *Time management in relation to patient consultations*
- *Communication skills*
- *Working as a member of the primary care team*
- *Accepting constructive feedback*

4. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every week to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

5. *You must send a reflective piece which demonstrates the impact of your lack of competence on patients, colleagues and the reputation of the profession to the NMC at least 14 days before any NMC review hearing or meeting.*

6. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.*

7. *You must tell the NMC within 14 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.*

8. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

9. a) *You must within 14 days of accepting any post of 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 14 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.

10. You must immediately tell the following parties 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 (9) above, to them

a. Any organisation or person employing, contracting with or using you to undertake nursing work

b. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services

c. Any prospective employer (at the time of application) where you are applying for any nursing appointment

d. 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 a course (at the time of application).

You should be aware that, in the absence of any evidence that you have remediated failings in your clinical practice or developed additional insight at the next review of this order there is a possibility that your sanction may increase. This order allows you a further chance to progress and demonstrate to a panel your remediation in relation to the concerns in your nursing practice.”

Decision on current fitness to practise

The panel has considered carefully whether your 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. It has noted the decisions of previous panels. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the evidence, both oral and documentary, before it including a detailed report from Askern Medical Practice ("the Practice") where you are currently employed, a reflective piece, and a number of training certificates. It has taken account of the submissions made by Ms Mohamed on behalf of the NMC and Mr Normanton on your behalf.

The panel heard evidence from Professor 1, Clinical Supervisor at the Practice. He took the panel through his report, which included commentary on the areas of concern within your practice, and a number of supervision records. Professor 1 told the panel that since your previous review hearing he has met with you twice weekly for an hour each time to discuss your nursing practice, and that he would also intervene with your work if required. Professor 1 outlined problems with your timekeeping that had been ongoing over the past year, despite consistent support at the Practice, and said that the Practice had received a number of verbal and written complaints within that time. Professor 1 told the panel that he has dedicated his personal time to supporting you, including staying after work and taking time out of his holiday to check your work. He said that you do not respond well to constructive feedback and often become angry during his supervisory sessions. Professor 1 told the panel that he would continue to support you for a further period of 3 months, but that he was unable to sustain the level of support required to be your clinical supervisor beyond that time.

The panel considered Professor 1 was a credible, measured and fair witness. His oral evidence was consistent with his written supervision records.

You gave oral evidence. You told the panel that since the imposition of your conditions of practice order in 2018 you have attended and undertaken online a number of training courses. You said that in July 2020 alone you attended 9 courses. You said that these courses have improved your professional skills. You accepted Professor 1's evidence that there is still room for improvement in your nursing practice, and that your fitness to practice is currently impaired. However, you said that some of the concerns raised are caused because you are not given enough time to deal with patients. You said that the main thing that causes you to run late every day is the short length of time permitted for patient telephone consultations.

You acknowledged that, when provided with feedback it may be advisable to pause to think before you answer, and to stay calm. In relation to your anger about leaving work late, you said that you often waited for Professor 1's supervisory sessions in the evening until around 7.30pm or 8pm. You said that this was difficult because of your personal commitments.

The panel considered your evidence was vague and, at times, unclear. It did not address sufficiently the areas of concern in your practice.

Ms Mohamed submitted that your fitness to practise remains impaired. She drew the panel's attention to the evidence of Professor 1, in particular that he had seen no significant improvement in your practice. Ms Mohamed submitted that evidence of insight and remediation is limited, and the concerns raised by previous panels have not been addressed. Ms Mohamed submitted that your fitness to practise remains impaired on both public protection and public interest grounds. Ms Mohamed submitted that it is a matter for the panel as to what sanction is appropriate, but reminded it that it may impose a period of suspension.

Mr Normanton submitted that a continuation of the current order is appropriate and proportionate at this time. He conceded that there may come a time when continued

lack of improvement may render conditions of practice inappropriate. However, that time is not now. He submitted that you are motivated and making real efforts to improve your nursing practice in the face of difficult personal circumstances. Mr Normanton submitted that, in the light of Professor 1's evidence that he will be unable to support you for much longer, movement to another practice may resolve matters. Mr Normanton submitted that a suspension order would be disproportionate at this time, and that a continuation of the current conditions of practice order for a period of 12 months would be fair and proportionate in the circumstances.

The panel accepted the advice of the legal assessor, who reminded the panel of the need to first consider if your fitness to practise remains impaired and then, if so, to then go on to consider the various sanctions available to it in ascending order of severity.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession, and the need to declare and uphold proper standards of conduct and behaviour. It had regard to all of the information before it.

The panel considered whether your fitness to practise is currently impaired. It considered that your lack of competence is remediable. However, you have not demonstrated significant or consistent improvement, despite extensive support and supervision since your substantive order was imposed in August 2018. This panel had regard to the areas of ongoing concern outlined in the report provided by Professor 1, and his oral evidence that in view of the lack of improvement in your practice over the past 12 months you still required ongoing significant supervision and checking in the long term. The panel was of the view that Professor 1 had gone beyond the supervision requirements set out in your current conditions of practice order in order to maintain patient safety. The panel noted that you have now been subject to a conditions of practice order for a period approaching two years, and you were on a competency programme prior to that. The panel had regard to your reflective piece. It considered that you demonstrated limited insight into what went wrong in the past, and sought to minimise your actions and blame others.

In the circumstances, the panel determined that there remains a real risk of harm to the public if you are permitted to practise as a nurse without restriction, and concluded that your fitness to practise remains impaired on the grounds of public protection.

The panel also had regard to the wider public interest, which includes declaring and upholding proper professional standards and maintaining public confidence in the regulatory process. The panel considered that public confidence in the profession and the regulatory process would be undermined if there were no finding of impairment. The panel therefore concluded that a finding of current impairment also remained necessary on wider public interest grounds.

Determination 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 in relation to sanction are set out in Article 30 of the Order. The panel also had regard to the NMC's Sanctions Guidance. It bore 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 and allow the order to lapse, but concluded that, in light of the ongoing public protection concerns, this would be inappropriate and insufficient in the light of the risk identified in this case.

The panel then considered whether to impose a caution order but concluded that, for the same reasons, this too would be inappropriate and insufficient.

The panel next considered the imposition of a further conditions of practice order. In the light of your continued lack of improvement despite consistent support and

supervision from your current employer, the panel could not be satisfied that you would make progress with the same order in place. The panel acknowledged that you are motivated to improve and have undertaken a significant amount of training. However, in the panel's view, the issue is that you have not been successful in implementing it in order to sustain a level of safe and effective practice.

Further, the panel was of the view that Professor 1 had provided you significant amount of support and supervision, but you have not achieved a sufficient, if any, level of improvement. The panel considered such an intensive supervision was not sustainable in the long-term, noting Professor 1's evidence that he would be unable to support you for any more than three months.

The panel considered that the current conditions in themselves did not afford the necessary level of public protection, and that it had been Professor 1's diligence and intervention when required that had ensured patient safety. In light of the ongoing lack of improvement, the panel did not consider that it was possible to formulate additional conditions to those currently in place which would adequately protect the public. It therefore considered that a conditions of practice order is neither sufficient, nor proportionate in the particular circumstances of this case.

The panel carefully considered a suspension order. It concluded that a suspension order for a period of six months would be the appropriate, proportionate, and sufficient sanction. The panel noted your prolonged lack of improvement, despite numerous training courses and consistent support from Professor 1. It decided that it would be proportionate to impose a suspension order on this occasion, given that your misconduct is remediable, as it would afford you a further opportunity to demonstrate that you have developed insight. The panel decided that a suspension order for a period of six months would be appropriate to protect the public and satisfy the wider public interest at this stage.

A striking off order was not available to the panel at this stage. However, this panel sought to remind you that all sanctions will be available to any future reviewing panel.

Any future reviewing panel may be assisted by the following:

- Your attendance, whether in person, by video-link or by telephone;
- A reflective piece from you demonstrating insight into the concerns raised by the substantive panel;
- Any up to date references or testimonials from any employment, whether paid or unpaid.

This decision will be confirmed to you in writing.

That concludes this determination.