

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

**Substantive Hearing**

**21 September 2020**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	Mr Alwyn Scott
<b>NMC PIN:</b>	07B2941E
<b>Part of the register:</b>	Registered Nurse Adult (2007)
<b>Area of registered address:</b>	Worcestershire
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Andrew Galliford-Yates (Chair, Registrant member) Anne Grauberg (Registrant member) Chris Thornton (Lay member)
<b>Legal Assessor:</b>	Hala Helmi
<b>Panel Secretary:</b>	Leigham Malcolm
<b>Nursing and Midwifery Council:</b>	Represented by Mr Michael Smalley, Case Presenter
<b>Mr Scott:</b>	Present and represented by Mr Darren Snow, instructed by the Royal College of Nursing
<b>Facts proved:</b>	Charges 1
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Suspension Order (six months) without a review
<b>Interim Order:</b>	Interim Suspension Order (18 months)

## **Details of charge**

*That you a registered nurse,*

- 1. On 26 September 2018, were convicted of theft of Fentanyl, Class A Drug contrary to section 1(1) and 7 of Theft Act 1968*

*AND in light of the above your fitness to practise is impaired by reason of your conviction.*

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

At the outset of the hearing, Mr Snow, on your behalf, informed the panel that matters relating to your health would be raised during the course of the hearing. He submitted that to protect your privacy, any matters relating to your health ought to be heard in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), did not object to the application.

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 your interests and outweighs any prejudice.

The panel determined to go into private session in connection with your health as and when such issues are raised in order to protect your privacy.

## **Decision and reasons on facts**

You admitted the charge and the panel found the charge proved by way of your admission.

The charges arose whilst you were employed as an in-flight nurse for Air Alliance Medflight UK (Air Alliance).

Following concerns that Fentanyl, a Class A opioid, was going missing from their medical supplies, Air Alliance launched an investigation, which included the installation of CCTV cameras covering their medical room and pharmacy. On 24 September 2018, at 07.45am you were witnessed on CCTV footage entering the pharmacy where you stole a 10ml glass ampoule of Fentanyl. As there was no clinical justification for your actions, Air Alliance contacted the police. Police officers subsequently attended the airport and you were arrested. You were informed of the CCTV footage and admitted the theft [Private].

You subsequently pleaded guilty to theft of a Class A drug on 26 September 2018. You were made subject to a 12 month community order, including a curfew requirement and a rehabilitation activity requirement for a maximum of 20 days.

## **Fitness to practise**

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction. 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 heard oral evidence from you under oath. [Private].

You informed the panel of the details of your curfew, imposed at Birmingham Magistrates Court, which restricted you to your house during certain hours, and which you complied with fully and completed. You told the panel that, on reflection, you are 'mortified and ashamed' by your actions. You said that the incident was a 'crazy moment of madness'. In respect of public perception, you stated that were the public to know of your conduct they would not have confidence in you as a nurse.

You accepted that your conduct was unacceptable and fell below the standards required of all registered nurse. You stated that you would love to return to nursing and when questioned on the risk of repetition you expressed remorse for your conduct and regret over losing a job you loved at Air Alliance. You told the panel after this experience there would be 'no way that this conduct would be repeated'. [Private].

The panel considered you to be open and honest in your oral evidence. It was of the view that you were genuine in what you said and were at no point evasive. You sought to help the panel and were clear and consistent in your answers. The panel decided that, overall, your evidence was honest and reliable.

### **Submissions on impairment**

Mr Smalley, on behalf of the NMC, addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). He submitted that, in view of your criminal conviction, your fitness to practise is currently impaired on public interest grounds.

Mr Snow, on your behalf, accepted that your conviction amounts to current impairment on public interest grounds. Whether or not your fitness to practise is currently impaired, on public protection grounds, he submitted, was a matter for the panel.

The panel took into account the position of the parties but was mindful that the question of current impairment is a matter for its own judgement.

The panel accepted the advice of the legal assessor which included reference to *Grant*.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the conviction, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society. 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 *CHRE v NMC and Grant* 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.'*

With regard to the test set out in the case of *Grant*, the panel decided that no patients were put at an unwarranted risk of harm as a result of the incident and there is no evidence that you are liable to put patients at an unwarranted risk of harm in the future. The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

The panel reached the view that your conduct resulting in your conviction did depart from the standards required of a registered nurse. Specifically, the panel considered that you breached the following sections of the NMC Code:

*20.1 Keep to and uphold the standards and values set out in the Code;*  
*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people;*  
*20.4 keep to the laws of the country in which you are practicing;*  
*20.8 act as a role model of professional behaviour for students and newly qualified nurses to aspire to*  
*[Private].*

The panel considered that limbs b, c and d, of the test set out in *Grant* to be engaged on the basis of what happened in the past. Your dishonest conduct, which led to your conviction, breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered your insight to be sufficient. The panel acknowledged that in your oral evidence you were able to explain what you would do differently if a similar situation were to arise in the future. You were also able to explain why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. By way of such reflection and understanding, the panel also considered you to have sufficiently remediated. As such, the panel decided that the risk of repetition is low.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

Whilst you do not present a risk to the public, and your fitness to practise is not impaired on the grounds of public protection, the panel found that your past conduct and subsequent conviction must be marked by a finding of impairment on public interest

grounds because not to do so would undermine public confidence in the profession and fail to uphold professional standards.

### **Submissions on sanction**

Mr Smalley, on behalf of the NMC, submitted what the NMC consider to be the aggravating and mitigation factors in your case.

The aggravating factors submitted were:

- Your conviction came as a consequence of dishonest conduct;
- It amounted to a breach of trust placed on you as a registered nurse.

The mitigating factors submitted were:

- There was no evidence of harm to patients;
- You admitted to the conduct at an early stage;
- You demonstrated a sufficient level of insight into your past conduct and conviction.

Mr Smalley submitted that, in the circumstances of your case, a six month suspension order without a review is appropriate and proportionate. He submitted that it would satisfy the public interest and send out a message on standards of conduct required of registered nurses.

Mr Snow, on your behalf, reminded the panel that you made admission at the outset and referred to the case of Parkinson v NMC [2010] EWHC 1898 (Admin) in considering dishonesty. He submitted that the theft of drugs was not for your own financial gain [Private].

Mr Snow submitted that you are capable of returning to nursing practice and in view of this, he invited the panel to impose a conditions of practice order. He submitted that a conditions of practice order would mark the panel's finding of impairment and satisfy the public interest in your case. He suggested conditions [Private].

### **Decision and reasons on sanction**

In reaching this decision, the panel has had regard to all the evidence that has been put forward in this case including: the submissions of both Mr Smalley and Mr Snow, your oral evidence and your two reflective statements. It had careful regard to the Sanctions Guidance (SG) published by the NMC and accepted the advice of the legal assessor.

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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 decision on sanction is a matter for the panel independently exercising its own judgement.

In reaching this decision, the panel found the following aggravating features:

- Your conviction came as a consequence of dishonest conduct;
- It amounted to a breach of trust placed on you as a registered nurse.

The panel also found the following mitigating features:

- There was no evidence of harm to patients;
- You admitted to the conduct at an early stage;
- You demonstrated a sufficient level of insight into your past conduct and conviction.

The panel considered the level of seriousness of your conviction. It bore in mind that it was an isolated incident, and one which you did not gain from financially. [Private]. However, your conviction was a serious offence. The panel decided that the conviction was serious but not at the top level of seriousness.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of your conduct and the fact of your conviction. The panel decided that to take no further action would fail to mark the public interest in this case and would not be proportionate.

It then considered the imposition of a caution order but again determined that, due to the seriousness of your conduct, the fact of your conviction, and the degree of public interest in your case, a caution order would not be proportionate. 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 your dishonest conduct, and consequent conviction, was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the issues.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG. It reached the view that there were no practicable or workable conditions that could be formulated, given that there are no clinical concerns in regard to your nursing practice, and as the panel has already found, a low risk of repetition. There are no conditions which can address the dishonesty in this case. Further, the panel considered that its finding of current impairment on public interest grounds alone, could only be sufficiently marked by a more severe sanction.

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:

- No evidence of repetition of behaviour since the incident;
- The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

The panel also took into account your sufficient insight and remediation, along with the particular circumstances surrounding the theft [Private]. It bore in mind that your conduct did not cause patient harm, was an isolated incident, and one which you did not gain from financially.

The panel also took into account that you have been the subject to an interim suspension order for almost two years, which although the panel did not give you credit for, took it into account by way of background information.

In these circumstances the panel decided that your conviction was not fundamentally incompatible with remaining on the register. Therefore, a striking-off order would be disproportionate.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order. Balancing all of these factors the panel was of the view that a suspension order for a period of six months would be the appropriate and proportionate sanction, and would satisfy the public interest. The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

In accordance with Article 29 (8A) of the Order the panel exercised its discretionary power and determined that a review of the substantive order is not necessary.

The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review, after a period of six months.

This will be confirmed to you in writing.

### **Interim order**

Mr Smalley, on behalf of the NMC, made an application for an interim suspension order for a period of 18 months.

Mr Snow, on your behalf, made no positive submissions

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Decision and reasons on interim order**

The panel decided that, if no interim order were imposed, then serious damage would be caused to public confidence in the nursing profession as a result of your theft of medication in the workplace which led to a conviction.

The panel was satisfied that an interim order is in the public interest. 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.

The panel decided to impose an interim suspension order for a period of 18 months so that should you decide to appeal its decision, the public interest will be served by way of this interim order.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.