

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

**Substantive Order Review Hearing
Friday, 6 August 2021**

Nursing and Midwifery Council
Virtual Meeting

Name of registrant: Gary Keith

NMC PIN: 86K0453S

Part(s) of the register: Registered Nurse – Sub Part 1
General Nursing – Level 2 – November 1988

Area of registered address: Fife

Type of case: Misconduct

Panel members: Louise Fox (Chair, Lay member)
Patience McNay (Registrant member)
Frances Clarke (Registrant member)

Legal Assessor: Richard Ferry-Swainson

Panel Secretary: Xenia Menzl

Order being reviewed: Suspension order (12 months)

Outcome: **Striking-off order to come into effect on 24
September 2021 in accordance with Article 30
(1)**

Decision and reasons on service of Notice of Meeting

The panel noted that the Notice of Meeting had been sent to Mr Keith's registered address by recorded delivery and by first class post and to his registered email address on 28 June 2021.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Meeting was delivered to Mr Keith's registered address on 29 June 2021. It was signed for against the printed name of '*KEITH*'.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, date and the fact that this would be a virtual meeting. The panel also noted that Mr Keith had been given the opportunity to request a hearing and/or to have provided written representation for this meeting, if he had wished to do so.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Keith has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 24 September 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 24 February 2020. This was reviewed on 10 February 2021 when the suspension order was extended for a period of six months.

The current order is due to expire at the end of 24 September 2021.

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:

- 1) *On 24th January 2017 failed to administer intravenous antibiotics and oxycodone to Patient A.*
- 2) *...*
- 3) *Between 8th March 2017 and 11th March 2017 signed to indicate you had administered isosorbide mononitrate to Patient B in the mornings when you had not done so.*
- 4) *On a date after 13th March 2017 altered the Kardex record for Patient B by scoring out entries of drug administrations.*
- 5) *Your actions as set out in charge 4 were dishonest in that you deliberately altered patient records in an attempt to conceal your error in charge 3 above.*
- 6) *On 13th April 2017 failed to undertake neurological observations on Patient C following an unwitnessed fall.*
- 7) *On 13th April 2017 completed a checklist indicating you had commenced neurological observations on Patient C when you had not done so.*
- 8) *...*
- 9) *On 3rd July 2017 failed to administer Tranexamic acid to Patient E.*

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

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

'The panel noted that the original panel found that Mr Keith had not demonstrated any insight into his clinical failings. At this hearing, the panel noted that it still had no evidence of any remediation or insight to address any of the identified areas of concern, there is no evidence of remorse, and that Mr Keith has not demonstrated any insight into his clinical failings. In the absence of any evidence of remediation, the panel considered there to be a real risk of repetition of Mr Keith's misconduct and a risk of significant harm to patients in his care.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mr Keith's fitness to practise remains impaired.'

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

'The panel next considered whether imposing a conditions of practice order on Mr Keith's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that, given Mr Keith has not shown any insight or engaged with this review process, a conditions of practice order would not be appropriate. In addition, this would not address

the dishonesty concerns. The panel bore in mind the seriousness of the facts found proved at the substantive hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel considered the imposition of a further period of suspension. It considered that Mr Keith needs to gain a full understanding of how the dishonesty of one nurse can impact upon the nursing profession as a whole as well as the organisation that the individual nurse is working for. The panel concluded that a further six month suspension order would be the appropriate and proportionate response and would afford Mr Keith adequate time to develop his insight and remediation. It would also give Mr Keith an opportunity to provide references and testimonials.

Balancing all these factors, the panel determined that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. It noted that the order is necessary to uphold the importance of maintaining public confidence in the profession, and sustain the standard of behaviour required as a registered nurse. Accordingly, the panel determined to impose a further suspension order for a period of six months. It considered this to be the most appropriate and proportionate sanction available.

The panel considered whether a striking-off order would be appropriate. The panel determined that it would not be appropriate or proportionate to remove Mr Keith from the register at this stage. However, the panel was of the view that if Mr Keith fails to engage with the NMC and provide evidence on his insight and remediation, a future panel would have all options open to it by way of sanctions, including striking Mr Keith off the register.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 24 March 2020 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- *Your attendance at any future review hearings;*
- *A comprehensive reflective piece addressing your clinical failings and your dishonesty;*
- *Evidence of any work undertaken whether it be paid or voluntary;*
- *References and testimonials from any work undertaken whether it be paid or voluntary.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Keith's 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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

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 Mr Keith's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Keith had not demonstrated any insight, remediation or remorse into his clinical failings. This panel noted that Mr Keith

has not engaged in the NMC process at all since before the substantive hearing and that it therefore had no information before it that would show that he has gained insight or remediated his failings.

As a result the panel was of the view that Mr Keith's fitness to practice remains impaired on the ground of public protection and to address the public interest in this case, for the same reasons as stated by the previous panel.

Decision and reasons on sanction

Having found Mr Keith's 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 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 Mr Keith's 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 Mr Keith's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice order on Mr Keith's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the reasoning of the last panel that a conditions of practice order was not appropriate in this

case due Mr Keith not showing any insight and his failure to engage with the regulatory process. The panel noted that Mr Keith has not engaged any further since before the substantive hearing and concluded that a conditions of practice order would not be workable or measurable and would therefore not adequately protect the public or satisfy the public interest.

The panel noted that Mr Keith has not provided any evidence that he has developed any insight, remediated or had plans to remediate his practice or engaged with the NMC proceedings in any meaningful way. The panel was of the view that considerable evidence would be required to show that Mr Keith no longer posed a risk to the public. The panel noted that the previous panel determined that:

'The panel considered whether a striking-off order would be appropriate. The panel determined that it would not be appropriate or proportionate to remove Mr Keith from the register at this stage. However, the panel was of the view that if Mr Keith fails to engage with the NMC and provide evidence on his insight and remediation, a future panel would have all options open to it by way of sanctions, including striking Mr Keith off the register.'

The panel acknowledged that Mr Keith had an unblemished career prior to the incidents and that the incidents occurred in a stressful environment over a period of time where leadership may have been less than ideal. The panel noted, however, that previous panels afforded Mr Keith with 18 months during his suspensions to engage with the NMC and despite various communications from the NMC, to date he has not responded.

The panel noted that registrants have a duty to engage with their regulator. The panel determined that the ongoing failure to engage with the proceedings raises fundamental questions about Mr Keith's professionalism as a registered nurse and adds to the regulatory concerns already found proven. The panel had no information regarding Mr Keith's response to the substantive panel's findings or his future intentions with regards to nursing. It therefore determined, given Mr Keith's continued non-engagement, that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel determined that the public interest will be best served by not prolonging proceedings with another period of suspension and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel determined that such an order was necessary to maintain public confidence in the profession.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 24 September 2021 in accordance with Article 30(1).

This decision will be confirmed to Mr Keith in writing.