

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

**Substantive Order Review Meeting
1 August 2022**

Virtual Meeting

Name of registrant: Mrs Abigail Victoria Hurley

NMC PIN: 90Y1236E

Part(s) of the register: Registered Nurse – Sub Part 1– 8 November 1993

Relevant Location: Nottinghamshire

Type of case: Misconduct

Panel members: Bryan Hume (Chair, Lay member)
Sharon Peat (Registrant member)
Alice Rickard (Lay member)

Legal Assessor: Mark Sullivan

Hearings Coordinator: Max Buadi

Order being reviewed: Suspension order (12 months)

Outcome: **Strike off order to come into effect upon expiry of the current order on 6 September 2022 in accordance with Article 30(1)**

Decision and reasons on service of Notice of Meeting

The panel noted that notice of this substantive order review meeting was sent to Mrs Hurley via email to an email address held on the NMC register on 14 June 2022. The notice informed Mrs Hurley that her conditions of practice order would be reviewed at a meeting on or after 25 July 2022, unless she asked for the review to take place at a hearing. The panel noted that there had been no response from Mrs Hurley.

The panel accepted the advice of the legal assessor.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The panel was satisfied that it was appropriate in the circumstances to conduct this review at a meeting rather than a hearing.

Decision and reasons on review of the current order

The panel decided to impose a strike-off order. This order will come into effect at the end of 6 September 2022 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 6 August 2021.

The current order is due to expire at the end of 6 September 2022.

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 a registered nurse, whilst employed by HC-One:

1. *On or around 23 September 2018 destroyed patient A's Oral Morphine medication:*
 - a) *Without good reason;*
 - b) *Did not record the reason for the destruction.*

2. *On or around 25 September 2018 did not adhere to HC One medication management policy and/or controlled drug procedure in that you:*
 - a) *Asked colleague W to sign a Controlled Drug book (the book) regarding a stock check without colleague W completing a stock check herself;*
 - b) *Stated you would fill in the book later or words to that effect;*
 - c) *Did not inform colleague W that medication for patient B was to be destroyed or had been destroyed.*
 - d) *...;*
 - e) *Added further information to an entry in a record after that same entry had been signed for and/or without recording the addition was made after the entry had been signed for;*
 - f) *Did not inform colleague W what additional information had been added after colleague W had signed the book.*

3. *On or around 27 September 2018 in breach of HC One's medication management policy and/or controlled drug procedure:*
 - a) *...*
 - b) *...*

4. *On or around 30 September 2018 in relation to the destruction of ampoules of Morphine Sulphate for Patient F:*
 - a) *Did not allow colleague X or another colleague to witness the said destruction;*
 - b) *Did not obtain a witness signature from colleague X or another colleague;*
 - c) *Falsified the signature of colleague X or another in the CD medication book.*

5. *On or around 4 October 2018 did not follow the HC One controlled drug procedure regarding stock checks at handovers in that you:*
 - a) *Carried out the stock check without colleague Y witnessing the stock check;*

- b) *Did not obtain a witness signature relating to the stock check before handover to colleague Y.*
6. *On or around 5 October 2018 did not follow the HC One medication management policy and/or controlled drug procedure, in that you:*
- a) *In relation to the destruction of Patient C's medication, stated to colleague Z, "would you rather just sign the book or actually come and witness it" or words to that effect.*
- b) *Stated to colleague Y "I already told you yesterday, that's not how things are done here, you can go and check them on your own" or words to that effect.*
7. *Your action in charge 4(c) was dishonest in that you falsified the signature of colleague X or another in the CD medication book.*
8. *Your action in charge 6(a) was dishonest, namely that, when you asked colleague Z to sign the CD record as a witness for the destruction of Patient C's medication you knew colleague Z had not witnessed the said destruction.*
9. *[PRIVATE]:*
- a) *[PRIVATE];*
- b) *[PRIVATE].*

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

The original panel determined the following with regard to impairment:

'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*

c) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The panel found limbs a), b), c) and d) engaged in this case. The panel was of the view that patients were put at a risk of harm as a result of Mrs Hurley's misconduct. Mrs Hurley's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

When considering matters such as insight, remediation, and remorse, the panel had no material evidence before it from Mrs Hurley. The panel was therefore of the view that there is a high risk of repetition and subsequently a risk of serious harm to patients should she permitted to practise without restriction. Further, the panel was of the view that since the time of the allegations, Mrs Hurley has not provided a reflective account of the allegations addressing the risk of repetition. There is no evidence that Mrs Hurley has changed her practice as a result of these complaints.

The panel therefore determined 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.

The panel concluded that public confidence in the profession would be significantly undermined if a finding of impairment were not made in this case given the seriousness of Mrs Hurley's dishonesty and therefore also finds her fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Hurley's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel then went on to consider whether a suspension order would be an appropriate sanction. It took into account the SG. The panel noted that the misconduct was serious, which involved Mrs Hurley dishonestly falsifying a signature of another colleague, purporting it to be genuine. The panel also had concerns around Mrs Hurley's behaviour towards colleagues especially attempts to get junior colleagues to breach controlled drugs procedures. Further, there is no evidence before the panel that Mrs Hurley has insight into her misconduct and noted that her actions were a significant departure from the standards expected of a registered nurse. The panel considered Mrs Hurley's lack of meaningful engagement with the NMC as her regulator, along with her failure to take responsibility for her past actions.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this current time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Hurley's case to impose a striking-off order. The panel was satisfied that in this case, the

*misconduct was not fundamentally incompatible with remaining on the register.
[PRIVATE].*

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order may cause Mrs Hurley. However, this is outweighed by the public interest in this case. 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 determined that a suspension order for a period of 12 months was appropriate and proportionate in this case to mark the seriousness of the misconduct, it will provide Mrs Hurley an opportunity to reflect on her misconduct
[PRIVATE].*

At 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. Mrs Hurley can also request an early review.

Any future panel reviewing this case would be assisted by:

- The completion of CPD training modules, demonstrating Mrs Hurley is keeping her clinical knowledge and skills updated;*
- References from any paid or voluntary work;*
- A written reflective piece addressing controlled drugs policies and procedure. The reflective piece should also address the impact Mrs Hurley has as a role model for her colleagues and the impact of her misconduct on the nursing profession as a whole; and,*
- An indication of whether she wishes to work as a registered nurse in the future.*

This will be confirmed to Mrs Hurley in writing.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Hurley'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 and emails from Mrs Hurley dated August 2021, March 2022 and June 2022.

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 Mrs Hurley's fitness to practise remains impaired.

The panel noted that the original panel found that all the limbs in the case of *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin)* engaged. Additionally the original panel had no material evidence from Mrs Hurley with regards to insight, remediation and remorse. As a result, the original panel concluded that there was a high risk of repetition and subsequently serious harm should Mrs Hurley be permitted to practise without restriction. At the current meeting the panel was of the view that there had been no change in circumstances.

This panel had no information from Mrs Hurley, since the last hearing, to demonstrate that the concerns of the substantive panel had been addressed. She has not provided a reflective piece or any evidence of insight into her misconduct nor has she provided any evidence that she has taken steps to remediate her misconduct.

In light of this lack of information and Mrs Hurley's lack of engagement, the panel determined that there remains a risk of harm to the public if she were permitted to practise as a nurse without restriction, and concluded that her fitness to practise remains impaired 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 Mrs Hurley's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Hurley'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 Mrs Hurley'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 Mrs Hurley'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 Mrs Hurley'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 seriousness of the facts found proved at the original meeting and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Hurley's misconduct.

The panel also took account of an email from Mrs Hurley, dated 13 August 2021, which stated that she has left nursing and has no intention of returning.

In view of Mrs Hurley's stated intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. The panel noted that Mrs Hurley stated that she does not intend to return to nursing and has not provided evidence of remorse for her misconduct, steps taken to strengthen her practice or any insight into her failings. Further, the panel noted that there has not been any meaningful engagement with these NMC proceedings.

The panel also took into account of an email from Mrs Hurley dated 12 March 2022 which stated:

"...Good grief! Is this STILL ongoing. I honestly thought I'd been struck off last year! Just get on with it! I don't WANT to be a nurse anymore. I don't have a DBS, please, please just strike me off and let it be over..."

The panel noted that with this email and subsequent emails, including one where she called the NMC "buffoons", it considered that Mrs Hurley's engagement with the NMC has been unprofessional. It found that there appear to be attitudinal concerns which the panel consider to be incompatible with remaining on the NMC Register.

In these circumstances the panel determined that a further period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mrs Hurley from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel therefore directs the registrar to strike Mrs Hurley's name off the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 6 September 2022 in accordance with Article 30(1).

This will be confirmed to Mrs Hurley in writing.

That concludes this determination.