

# Nursing and Midwifery Council Fitness to Practise Committee

## Substantive Hearing 13-15 June 2022

Virtual Hearing

<b>Name of registrant:</b>	Eva Hossaini
<b>NMC PIN:</b>	13L0473C
<b>Part(s) of the register:</b>	Nursing, Sub Part 1 RN1, Adult Nursing, Level 1 20 December 2013
<b>Relevant Location:</b>	Southwark
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Andrew Macnamara (Chair, Lay member) Jim Blair (Registrant member) Christine Moody (Lay member)
<b>Legal Assessor:</b>	Nina Ellin
<b>Hearings Coordinator:</b>	Amira Ahmed
<b>Nursing and Midwifery Council:</b>	Represented by Amanda Bailey, Case Presenter
<b>Ms Hossaini:</b>	Not present and not represented
<b>Facts proved:</b>	1, 2 and 3
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Suspension order (6 months)
<b>Interim order:</b>	Interim suspension order (18 months)

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

At the outset of the hearing, Ms Bailey made a request that part of the hearing be held in private on the basis that exploration of parts of Ms Hossaini's case involves her [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 the interests of any party or by the public interest.

The panel determined to go into private session in connection with Ms Hossaini's [PRIVATE] as and when such issues are raised.

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Hossaini was not in attendance and that the Notice of Hearing letter had been sent to Ms Hossaini's registered email address on 26 April 2022. On 13 May 2022, Ms Hossaini was sent an email by her case officer explaining that the hearing would be taking place virtually and not physically.

Ms Bailey on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Ms

Hossaini's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Hossaini has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Ms Hossaini**

The panel next considered whether it should proceed in the absence of Ms Hossaini. It had regard to Rule 21 and heard the submissions of Ms Bailey who invited the panel to continue in the absence of Ms Hossaini. She submitted that Ms Hossaini had voluntarily absented herself.

Ms Bailey referred the panel to the email dated 31 May 2022 from Ms Hossaini which stated:

[PRIVATE]

Ms Bailey also referred the panel to the email sent to Ms Hossaini by her NMC case officer on 6 June 2022 stating:

[PRIVATE]

The panel were then referred to Ms Hossaini's response to this email on 6 June 2022 which stated:

[PRIVATE}

Ms Bailey submitted that the substantive hearing had been postponed administratively twice before (in December 2019 and in July 2020). This case was now some four years

old. [PRIVATE}. She submitted that there are three witnesses waiting to give evidence and that Ms Hossaini has been aware of the hearing dates and the preparation of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel decided to proceed in the absence of Ms Hossaini. In reaching this decision, the panel considered the submissions of Ms Bailey and the emails from Ms Hossaini, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- There have been two previous postponements [PRIVATE];
- [PRIVATE]
- Three witnesses have attended today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and a further delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted Ms Hossaini has engaged with her case officer [PRIVATE]. The panel noted that the virtual hearing link had not been sent out to Ms Hossaini and directed that the link be sent to Ms Hossaini along with a covering email inviting her to take part in the hearing. Ms Hossaini did not respond to the emails that were sent to her on 13 June 2022.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms Hossaini. The panel will draw no adverse inference from Ms Hossaini's absence in its findings of fact.

### **Details of charge**

That you, a registered nurse while working at London Bridge Hospital for HCA Healthcare:

- 1) On 12 June 2018 informed your employer HCA Healthcare that you were sick and could not work a day shift when you worked the day shift as an Agency Nurse for Pulse Agency.
- 2) On 13 June 2018 informed your employer HCA Healthcare that you were sick and could not work a day shift when you worked the day shift as an Agency Nurse for Pulse Agency.
- 3) Your actions in charge 1 and/or 2 were dishonest in that you made a misrepresentation to your employer to receive a financial gain.

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

### **Background**

The charges arose whilst Ms Hossaini was employed as a registered nurse by HCA Healthcare and were working at London Bridge Hospital (the Hospital). It is alleged that on 12 and 13 June 2018 Ms Hossaini informed HCA Healthcare that she was sick and allegedly reported having a 'headache, were vomiting and a fever of 38.5' and could not work the day shifts. It is alleged that Ms Hossaini then worked the day shifts as an Agency Nurse for Pulse Agency.

It is alleged that Ms Hossaini's misrepresentations to her employer were for financial gain. In a disciplinary meeting dated 7 August 2018, she allegedly told Mr 1 that if she was 'completely honest' she had 'double booked' and she allegedly said that 'the only excuse I could think of was sickness' and 'the only reason is the money if I'm completely honest'.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Bailey.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Mr 1: Chief Nurse at the Hospital at the time of the events;
- Ms 2: Clinical Nurse Adviser for Pulse Agency at the time of the events;
- Ms 3: Cardiac Ward Manager at the Hospital at the time of the events.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor including the NMC guidance on making decisions on dishonesty charges.

The panel then considered each of the charges and made the following findings.

## **Charge 1 and 2**

- 1) On 12 June 2018 informed your employer HCA Healthcare that you were sick and could not work a day shift when you worked the day shift as an Agency Nurse for Pulse Agency.
- 2) On 13 June 2018 informed your employer HCA Healthcare that you were sick and could not work a day shift when you worked the day shift as an Agency Nurse for Pulse Agency.

### **These charges are found proved.**

In reaching its decision the panel noted the documentary evidence including the rota schedules and payslips from the Hospital and Pulse Agency as well as the witness statements. It noted that Ms Hossaini had called in sick to the Hospital and then gone on to work for Pulse Agency. The panel considered that Ms Hossaini could have 'double booked' shifts by mistake and admitted that she had made an error and been honest about it.

The panel took into account the evidence of Mr 1 and Ms 3 who both explained that Ms Hossaini seemed remorseful for her actions in the disciplinary hearing and had also offered to pay back the money she had fraudulently procured. Mr 1 noted that her actions were contrary to the Hospitals Corporate Attendance policy.

On the balance of probabilities the panel determined that charges 1 and 2 were both found proved.

### **Charge 3)**

- 3) Your actions in charge 1 and/or 2 were dishonest in that you made a misrepresentation to your employer to receive a financial gain.

**This charge is found proved.**

In reaching this decision, the panel took into account Ms 3's oral evidence which explained that in her investigation meeting dated 25 July 2018, Ms Hossaini had admitted to working for Pulse Agency and that it was mainly for financial reasons that she had called in sick.

The panel also noted the evidence from Mr 1 which explained that Ms Hossaini in the disciplinary hearing of 7 August 2018 stated when questioned about her actions that

“...the only excuse I could think of was sickness” and ‘the only reason is the money if I’m completely honest’

The panel noted that in the investigation meeting dated 25 July 2018 Ms Hossaini had been open and honest about what she had done but did not take this approach initially and instead gave a detailed set of lies to her employer about her health on 12 and 13 June 2018 and again in her return to work interview 25 June 2018. The panel noted that this repeated conduct showed a disregard for her employers trust.

The panel noted that Ms Hossaini had a number of opportunities to explain what she had done to her employers but had chosen not to do so and it was only when she was being formally investigated that she explained her actions.

On the balance of probabilities, the panel found that Ms Hossaini knew at the time she phoned in sick to the Hospital that she was going to work for Pulse Agency. These actions were clearly dishonest and she failed to explain or rectify them at any stage prior to the investigation meeting. The panel therefore found that Ms Hossaini had made dishonest representations to her employers for financial gain and therefore charge 3 is found proved.

## **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Ms Hossaini's fitness to practise is currently impaired. 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, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms Hossaini's fitness to practise is currently impaired as a result of that misconduct.

## **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Bailey invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Bailey identified the specific, relevant standards where Ms Hossaini's actions amounted to misconduct. She submitted that Ms Hossaini's dishonest conduct was repeated and fell far below the standard expected of a registered nurse.

### **Submissions on impairment**

Ms Bailey moved on to the issue of impairment and addressed the panel on the need 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) and Grant* [2011] EWHC 927 (Admin).

Ms Bailey submitted that Ms Hossaini placed her own financial needs first. She submitted that Ms Hossaini had admitted to doing this and had explained that she was under financial pressure and needed the money for travel plans and to pay off some debts, following the break-up of her engagement.

Ms Bailey submitted that although Ms Hossaini has been engaging with her NMC case officer, she has not provided any information about her work status currently or since the incidents. She has not shown remediation or any clinical based work she has done. She has not written a reflective piece to show insight into her dishonest actions and therefore there is nothing to assist the panel further at this stage.

Ms Bailey submitted that Ms Hossaini's fitness to practice is currently impaired.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms Hossaini's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Hossaini's actions amounted to a breach of the Code. Specifically:

## **20 Uphold the reputation of your profession at all times**

**20.1** keep to and uphold the standards and values set out in the Code

**20.2** act with honesty and integrity at all times...

**20.8** act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

## **21 Uphold your position as a registered nurse, midwife or nursing associate**

**21.3** act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Ms Hossaini's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Ms Hossaini's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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.'*

The panel finds that Ms Hossaini's misconduct has 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 serious.

The panel considered that Ms Hossaini has not provided a reflective piece or any evidence of insight into her dishonest actions. The panel noted that Ms Hossaini's actions did not relate to her clinical abilities, however, she has not provided any information on whether she has been undertaking any clinical work since the incidents. The panel is of the view that there is a risk of repetition based on a lack of evidence of Ms Hossaini's understanding of the seriousness of her actions. The panel noted that she is currently facing [PRIVATE] issues but she has not given this panel any evidence of remorse for her dishonesty or provided any insight into how dishonest conduct of this type reflects on the nursing profession as a whole. The panel was of the view that prioritising agency work over her main nursing work in the cardiac ward at the last moment for her own financial gain would have led to an impact on that ward in terms of having to find a suitable replacement and therefore may have impacted on patient care and safety. The panel therefore decided 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.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Hossaini's fitness to practise impaired on the grounds of public interest.

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

### **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months with a review. The effect of this order is that the NMC register will show that Ms Hossaini's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Ms Bailey informed the panel, the NMC seek the imposition of a suspension order for the period of three months.

Ms Bailey set out the aggravating and mitigating features in this case. She submitted that a suspension order would mark the seriousness of Ms Hossaini's actions. She explained that Ms Hossaini's misconduct does not relate to clinical issues and therefore a conditions of practice order would not be appropriate.

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

Having found Ms Hossaini's 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 panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Financially motivated misconduct;
- No evidence of insight or remediation;
- Dishonesty that was maintained for over a month.

The panel also took into account the following mitigating features:

- Full admissions and some remorse shown in the investigation meeting and an offer to pay back the money;
- No clinical concerns or actual patient harm.

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 and public interest issues identified, an order that does not restrict Ms Hossaini's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Ms Hossaini'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 is of the

view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. It further noted that the misconduct identified in this case was not something that can be addressed through retraining.

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 harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Hossaini's case to impose a striking-off order.

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 will inevitably cause Ms Hossaini. 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.

In making this decision, the panel carefully considered the submissions of Ms Bailey in relation to the sanction that the NMC was seeking in this case.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct and to allow Ms Hossaini time to reflect upon her actions and provide evidence of remediation and insight.

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.

Any future panel reviewing this case would be assisted by:

- Ms Hossaini's attendance at the review hearing
- Evidence of a reflective statement on how Ms Hossaini has addressed her breaches of the NMC code of conduct;
- Up to date information on Ms Hossaini's employment status
- References from any work voluntary or paid that Ms Hossaini has undertaken.

This will be confirmed to Ms Hossaini in writing.

### **Interim order**

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 Ms Hossaini's own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Bailey. She submitted that an interim suspension order was needed to cover the 28 day appeal period.

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

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise 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 concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.