

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

**Substantive Order Review Hearing
Friday 4 March 2022**

Virtual Hearing

Name of registrant: Mrs Ruth Alison Patton

NMC PIN: 11A0091E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - January 2011

Area of registered address: Merseyside

Type of case: Misconduct

Panel members: Bryan Hume (Chair, Lay member)
Richard Curtin (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Anya Sharma

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mrs Patton: Present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (18 months) to
come into effect on 12 April 2022 in
accordance with Article 30(1)**

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

At the outset of the hearing, Mr Webb on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to your health should be heard in private.

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 go into private session in connection with your health as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect at the end of 12 April 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the seventh review of a substantive conditions of practice order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 9 September 2015. This order was reviewed on 1 September 2016 and extended for a further six months. The order was reviewed again on 28 February 2017 whereupon it was replaced by a 12 month suspension order. On 27 August 2019 the third reviewing panel decided to replace the suspension order with a conditions of practice order for a period of

18 months. On 10 September 2020 the fourth reviewing panel replaced the conditions of practice order with a suspension order for a period of 12 months. The fifth reviewing panel on 10 September 2020 decided to extend the suspension order for a further period of 12 months. This case was last reviewed on 2 September 2021 where the suspension order was extended for a further six months.

The current order is due to expire at the end of 12 April 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, whilst employed as a registered nurse at Benham Care Home, Bromborough, The Wirral ('the Home'):

1. *On 14 July 2013:*
 - a) *Administered one Oxycodone MR 10mg tablet to Patient A at 22:00, when the prescribed dose was two Oxycodone MR 10mg tablets (20mg).*
 - b) *Recorded in Patient A's Medication Administration Record that you had administered two Oxycodone MR 10mg tablets at 22:00 when you had administered one.*
2. *On 14 July 2013, gave Patient A Oxycodone at 22:00 despite his previous dose having been administered by Colleague A at 16:45;*
3. *On one or more occasions between 11 July 2013 and 15 July 2013, you administered 7.5mg of Oxynorm liquid to Patient A without recording in Patient A's notes your reasons for doing so;*

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

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

'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 Patton's fitness to practise remains impaired. The panel noted the serious charges found proved by admission at the original panel. It considered that it had nothing before it to demonstrate that the risk in this case had reduced, or that Mrs Patton had been making attempts to remediate the concerns raised. The panel had no evidence before it to suggest that Mrs Patton had undertaken any of the suggestions made by the previous review panel therefore there was no change to the circumstances of this case since the last review. In light of this, this panel determined that Mrs Patton is liable to repeat matters of the kind found proved and that there would be a risk of significant harm to patients if Mrs Patton were allowed to practise without restriction. 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. Therefore, in the absence of any evidence of remediation, the panel determined that a finding of continuing impairment on public interest grounds is also required.

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

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

'Having found Mrs Patton'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 further action or to impose a caution order, but concluded that this would not be sufficient to protect the public and would be inappropriate in view of the risk to patient safety identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or to impose a caution order.

The panel next considered whether a conditions of practice order would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that Mrs Patton had failed to comply with previous conditions of practice and has not meaningfully engaged with the NMC. The panel also noted that it had no information about her plans for returning to practice. It also considered that Mrs Patton had not provided any information to demonstrate remediation since the previous review panel. The panel was therefore not able to formulate appropriate conditions of practice that would adequately address the concerns relating to Mrs Patton's misconduct.

The panel next considered imposing a further suspension order. It noted that Mrs Patton had raised concerns about her health at the previous review. Whilst acknowledging that Mrs Patton's health issues remain outstanding, this panel saw no reason why she could not at least have attended this hearing remotely or provided a reflective piece as envisaged by the last panel. In these circumstances, the panel gave serious consideration to making a striking off order. However, the panel determined that, in view of this background and context, a further period of suspension would be appropriate to allow Mrs Patton a further (and possibly final) opportunity to reflect and engage with the NMC.'

Decision and reasons on current impairment

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. 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 your reflective piece, the character reference in your name and information in regard to your courses enrolment. It has taken account of the submissions made by Mr Webb on behalf of the NMC and also had regard to your oral evidence under affirmation.

Mr Webb provided the panel with a background to the case and referred it to the decisions of previous reviewing panels. He submitted that you are now at a point where you are able and willing to take the necessary steps to return to practice. Mr Webb referred the panel to the documents you have provided the panel with today, which includes a positive character reference and information detailing the steps that you have already started in relation to moving back to clinical practice and keeping your clinical knowledge up to date.

Mr Webb submitted that given the new information it is the NMC's position that current impairment remains in this case, on the basis that you have not been in nursing practice for some time and have therefore not had the opportunity to demonstrate remediation of the concerns which led to the order. He submitted that given your reengagement and that your health has improved a conditions of practice order would be appropriate and sufficient to address the level of risk that remains in this case.

Mr Webb referred the panel to the decision made by a past reviewing panel on 26 February 2018. He submitted that the conditions of practice order that was imposed at the time may be appropriate given that you have told the panel you would benefit from some support to return to practice, but that it is a matter for the panel to consider.

You told the panel under affirmation that your reason for non-attendance and non-engagement at the previous review of this order was due to [PRIVATE].

[PRIVATE] You said that by September 2022 you hope that you will be able to look at going back to university to do a return to practice course and possibly pursue your passion of training as a midwife.

You told the panel that you understand that you have been out of practice for a long time and you would benefit from having someone supporting you and overseeing your work, for example any training you undertake, and that this would assure you that you are safe to return to practice.

You explained to the panel that you have learnt a lot and would never put yourself into this situation again. You said that it has taken you a while to realise that it was your role and responsibility and you had failed to carry that out at the time, but you have now reflected and learnt from it.

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 your fitness to practise remains impaired and in reaching its decision noted the decision of the last reviewing panel. At this hearing the panel took into account your engagement and attendance at this hearing, as well as your oral evidence under affirmation. The panel was of the view that you had now demonstrated an understanding of why what you did was wrong and that you have taken full responsibility for your failures in the past.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the new information before it, which included your detailed reflective piece, the positive character reference from a past colleague and information on the courses that you have enrolled on and the efforts you have made to maintain your nursing

practice. The panel noted that you have clearly demonstrated an ambition to continue with your career in nursing.

The panel noted that you have been out of nursing practice for a significant period of time and would need to undertake a return to practice course, which you have acknowledged and are willing to do. In light of this, 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 your fitness to practise remains impaired.

Decision and reasons 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 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 your 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 your 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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been evidence produced, as seen in your reflective piece, to show that you have developed good insight, have demonstrated remorse and have provided evidence of the steps you have taken to strengthen your practice. The panel also considered that as you have not been able to work, you have not been able to demonstrate remediation of your actions. You have indicated that you wish to return to nursing.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. You must notify the NMC within 14 days of these conditions of practice coming into force of your current employment status as a registered nurse.*
- 2. You must notify 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.*
- 3. You must, within 14 days of accepting any post or 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.*

4. *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.*
5. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to ensure your proficiency in the management and administration of controlled drugs*
6. *You must not carry out the administration of controlled drugs unless supervised by a senior nurse (band 6 and above) until that supervisor deems you to be proficient and signs off to that effect. Such supervision to consist of:*
 - *The senior nurse directly observing any administration of controlled drugs by you.*
7. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance in respect of condition 5 above at least 14 days before any NMC review hearing or meeting.*
8. *You must immediately inform 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 (7) 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)*
 - c) *Any prospective employer (at the time of application)*
 - 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 such a course (at the time of application).*

The period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of date in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at a future hearing
- Evidence demonstrating that your nursing practice has been remediated
- Testimonials from your university course lead or any future employer

This will be confirmed to you in writing.

That concludes this determination.