

**Nursing and Midwifery Council**

**Fitness to Practise Committee**

**Substantive Meeting**

**19 May 2022**

Virtual Hearing

<b>Name of registrant:</b>	Mrs Diane Louise Staves
<b>NMC PIN:</b>	90D0910E
<b>Part of the register:</b>	RN1 General Nursing (1993)
<b>Area of registered address:</b>	North East Lincolnshire
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Richard Youds (Chair, lay member) Jonathan Coombes (Registrant member) Michael Glickman (Lay member)
<b>Legal Assessor:</b>	John Caudle
<b>Panel Secretary:</b>	Leigham Malcolm
<b>Facts proved:</b>	Charges 1 & 2
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Suspension Order (six months)
<b>Interim order:</b>	Interim Suspension Order (18 months)

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

The panel was informed that the Notice of Meeting had been sent to Mrs Staves' registered email address on 7 April 2022 and that no response had been received.

The panel took into account that the Notice of Meeting provided details of the allegations as well as the time frame during which a meeting would be held.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Staves 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).

## **Details of charge**

*That you, a registered nurse:*

*1. On or around 3 August 2018 removed a quantity of medication from the Diana Princess of Wales Hospital without permission.*

*2. Your conduct in charge 1 above was dishonest in that you knew you did not have permission to remove the medication.*

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

## **Decision and reasons on facts**

At the outset of the meeting, the panel noted in the Regulatory Concerns Response Form, signed and dated on 16 May 2019, Mrs Staves admitted to theft of paracetamol.

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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.

## **Background**

The NMC received a referral from the Acting Head of Nursing at Northern Lincolnshire & Goole NHS Foundation Trust (the Trust) on 14 December 2018. The referral alleged that on 3 August 2018 Mrs Staves accessed the controlled drugs cupboard, whilst on annual leave and without permission, and took one box of paracetamol.

On 29 October 2018 Mrs Staves was dismissed from the Trust for theft of medication.

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

### **Charge 1**

*1. On or around 3 August 2018 removed a quantity of medication from the Diana Princess of Wales Hospital without permission.*

In considering this charge the panel took account of the Regulatory Concerns Response Form signed and dated 16 May 2019 in which Mrs Staves responded “True” to theft of medication from the workplace. It also took account of Mrs Staves’ admission during the internal investigation and the witness statements before it, which speak of Mrs Staves

going to and from the medications cupboard at the Trust. In view of Mrs Staves' admission to theft of medication, as well as the witness evidence before it, the panel found Charge 1 proved.

**This charge is found proved.**

## **Charge 2**

*2. Your conduct in charge 1 above was dishonest in that you knew you did not have permission to remove the medication.*

The panel took account of all of the evidence before it. The panel bore in mind that Mrs Staves was on leave at the time of the incident. There was no evidence before the panel that Mrs Staves had any reason to access the medications cupboard at the time alleged. The panel determined that Mrs Staves acted without permission or authority and was dishonest in her removal of the medication.

There was no evidence before the panel to suggest an alternative explanation for Mrs Staves' actions, or that she made an innocent or careless mistake.

In view of all of the evidence before it, the panel found Charge 2 proved.

**This charge 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 Mrs Staves' 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, Mrs Staves' fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

The NMC reminded the panel of its overarching objective to protect 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.

The NMC identified the specific, relevant standards where Mrs Staves' actions amounted to misconduct, namely standards 18 and 20, and invited the panel to take the view that the facts found proved amount to misconduct.

The NMC invited the panel to find Mrs Staves' fitness to practise impaired on the grounds of public protection as well as in the public interest.

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

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.’ The panel has also referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

When determining whether 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”).

The panel was of the view that Mrs Staves’ actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Staves’ actions amounted to a breach of the Code, specifically:

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

*To achieve this, you must:*

*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...*

*20.4 keep to the laws of the country in which you are practising”*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that Mrs Staves’ actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel noted evidence before it that Mrs Staves had been under considerable stress at the time as a result of caring for her ill husband and had taken additional leave from the Trust to enable her to do so. However, it was of the opinion that this did not justify the misconduct found proved.

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

The panel next went on to decide if as a result of the misconduct, Mrs Staves’ 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 and honest. 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 determined that no patients were put at risk of harm due to Mrs Staves' misconduct, as the medication taken is readily available 'over the counter' and could easily have been replaced. However, Mrs Staves' misconduct and dishonesty breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Mrs Staves attended the Trust whilst on annual leave and removed medication without permission or authority, for use by her husband. Mrs Staves thereby acted dishonestly. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Staves has remedied her practice.

There was no evidence before the panel to indicate that Mrs Staves has done anything to remediate her dishonesty. Mrs Staves has not provided a reflective statement or any evidence of training or professional development. Although Mrs Staves had said in her statement for the internal investigation that she was 'truly sorry', there was nothing before the panel to evidence that Mrs Staves had any insight into her misconduct and dishonesty. In these circumstances, the panel was of the view that there is a risk of repetition.

The panel bore in mind 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.

Whilst the panel could not identify any public protection issues in this case, it concluded that public confidence in the profession would be undermined if a finding of impairment

were not made in this case and therefore finds Mrs Staves' fitness to practise impaired on the grounds of public interest alone.

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

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

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that Mrs Staves' 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.

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:

- Attending work specifically to steal medication;
- Lack of insight.

The panel also took into account the following mitigating features:

- One-off incident;
- Stress due to Mrs Staves caring for her husband.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the dishonesty in this 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 dishonesty present in this case, an order that does not restrict Mrs Staves' 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 Staves' misconduct was not at the lower end of the spectrum as it involved dishonesty 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 placing conditions of practice on Mrs Staves' 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, in particular:

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Potential and willingness to respond positively to retraining;*

The panel is of the view that given the dishonesty along with Mrs Staves' lack of engagement, there are no practical or workable conditions that could be formulated. In these circumstances, the misconduct identified was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on registrant's registration would not adequately address the public interest in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The panel went 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 Mrs Staves' 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.

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 Mrs Staves. 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 six months was appropriate in this case to mark the seriousness of the misconduct and dishonesty and to give Mrs Staves an opportunity to strengthen her professional practice.

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:

- Mrs Staves' engagement in proceedings;
- A reflective statement;
- Evidence of any training, specifically around the management of medication, and any learning that Mrs Staves has done to strengthen her nursing practice.

This will be confirmed to Mrs Staves in writing.

### **Decision and reasons on 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 Mrs Staves' own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary 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 to allow sufficient time for any potential appeal

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

That concludes this determination.

