

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

**Substantive Order Review Hearing
Wednesday 5 April 2023**

Virtual Hearing

Name of registrant: Micaela Ellis

NMC PIN: 08J0069E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – February 2009

Relevant Location: Bristol

Type of case: Misconduct

Panel members: Phil Lowe (Chair, Lay member)
Kathryn Smith (Registrant member)
Shaun Donnellan (Lay member)

Legal Assessor: James Holdsworth

Hearings Coordinator: Zahra Khan

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

Ms Ellis: Present and represented by Kriti Upadhyay,
instructed by Royal College of Nursing (RCN)

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to
come into effect on 14 May 2023 in
accordance with Article 30 (1)**

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

At the outset of the hearing, Ms Upadhyay, on your behalf, made an application for this case to be heard partly in private on the basis that proper exploration of your case involves inextricable references to your health. The application was made pursuant to Rule 19 of Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

Mr Webb, on behalf of the Nursing and Midwifery Council (NMC), did not oppose the application.

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 your health as and when such issues are raised in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order for a period of 12 months.

This order will come into effect at the end of 14 May 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of two years by a Fitness to Practise Committee panel on 12 April 2018. This was reviewed on 9 April 2020 and a further conditions of practice order was imposed for a period of 18 months. This was again reviewed on 6 October 2021 when the panel varied the conditions of practice order.

The current order is due to expire at the end of 14 May 2023.

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, whist employed, as a staff nurse, by University Hospital Bristol NHS Foundation Trust and working on the General Intensive Care Unit of Bristol Royal Infirmary:

1. ...

2. ...

3. *On 17 May 2013, failed to ensure that an unknown patient was monitored when they were on a bedpan; **[admitted and found proved]***

4. ...

5. *On 28 August 2013, did not double pump Noradrenaline for an unknown patient; **[admitted and found proved]***

6. ...

7. *On 10 September 2013:*

7.1 *Failed to ensure that Patient A was turned four hourly; **[admitted and found proved]***

7.2 *Recorded on Patient A’s notes that you turned Patient A when you did not. **[admitted and found proved]***

- 7.3 *Failed to take a sample of Patient A's protected catheter; **[admitted and found proved]***
8. *On 25 September 2013, incorrectly administered Perindopril and / or Amlodipine to an unknown patient who was already prescribed Noradrenalin; **[admitted and found proved]***
9. ...
10. On 18 December 2013:
- 10.1 *Failed to adequately prepare for the transfer of a patient from ICU to a CT scan in that you forgot to bring an oxygen mask; **[proved]***
- 10.2 ...
- 10.3 ...
11. On 18 March 2014:
- 11.1 *Failed to provide mouth care to a patient contrary to the Trust's mouth care protocol; **[admitted and found proved]***
- 11.2 *Failed to conduct hourly monitoring of a patient's blood glucose level contrary to the Trust's policy; **[admitted and found proved]***
- 11.3 *Failed to accurately document the infusion level of potassium chloride; **[admitted and found proved]***
- 11.4 *Failed to document your reasons for why a patient's labetalol Infusion rate was doubled; **[admitted and found proved]***
- 11.5 *Added retrospective records without marking these as retrospective; **[admitted and found proved]***

11.6 Continued to run an insulin infusion for a patient that did not require an insulin infusion; **[admitted and found proved]**

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

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

'The panel considered whether your fitness to practise remains impaired.

In its consideration of your insight, the panel had regard to your recent reflective piece. Whilst it did not have the benefit of your previous reflection, it noted the previous panel's finding that you had not shown insight into your clinical failings or their impact on patients and the nursing profession. The panel noted that in your recent reflection, you looked beyond the impact your failings had on you, and discussed the impact of your conduct on patients, colleagues and the wider nursing profession. It was satisfied that you were remorseful, and concluded that your insight had developed since the previous hearing and you now understood how your actions impacted others.

The panel next considered whether you had strengthened your practice. It acknowledged the considerable efforts you have made to address the shortcomings in your practice within the confines of a non-registered nursing role. It noted the evidence of some remediation in the form of training certificates and information you had provided about your role, including the patient care you provide and the record keeping required of you. It also noted the positive reference from your line manager, albeit this did not comment on your clinical practice. The panel also considered the incremental steps you had taken to advance in the form of working in a Band 3 role and your future intention to progress to Band 4 and Band 5 roles. However, the panel noted that as you are not permitted to administer medication in your Band 3 role, you have not been able to show competency in this area. You also have not

been able to demonstrate compliance with the conditions of practice in a registered nursing role. Therefore, the panel determined that you have not been able to fully remediate your practice.

In all the circumstances, this panel determined that there remains a risk of you repeating matters of the kind found proved. 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 to ensure confidence in the NMC and to declare and uphold proper standards of conduct.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The second reviewing panel determined the following with regard to 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 and the public protection issues identified. 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, for the reasons previously 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 next considered whether imposing a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that the concerns in this case are remediable.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence or deeply-seated attitudinal problems. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case. It was satisfied that you have done what is possible to strengthen your practice within the confines of your current role, and also noted your ongoing engagement with the regulatory proceedings.

The panel considered your request to vary condition 2 of the existing order and the relevant submissions from Ms Upadhyay and Mr Brahimi. The panel has decided to vary condition 2 to make it clear that direct supervision is only required in relation to medication administration. The panel has decided not to vary the conditions to allow your line manager to sign off on your competency for medication administration. The panel accepted that you would be completing a Test of Competence before returning to practice. However, the panel has not had information about your employer's governance processes for sign off, and given the serious concerns about your practice when administering medication, it has decided that allowing an employer to assess your competency to administer medication would not sufficiently address the risk to the public in the circumstances of your case. The panel noted that an early review of this order was open to you to request, should you consider that your circumstances in this respect have changed.

The panel therefore decided to impose the following conditions, which it considered are appropriate and proportionate in this case:

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 tell the NMC within 7 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.*
- 2. You must ensure that you are supervised by your line manager or a Band 6 or above registered nurse any time you are working. This supervision does not require direct observation, except when related to medication administration as outlined in condition 3.*

3. *In relation to administering medication, your supervision must consist of working at all times whilst being directly observed by a registered nurse of Band 6 or above.*

4. *You must work with your line manager, mentor or nominated deputy to create a personal development plan (PDP). Your PDP must address the concerns about medication management, patient care and record keeping. You must:*
 - a. *Send your case officer a copy of your PDP before the next review.*
 - b. *Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
 - c. *Send your case officer a report from your line manager every three months. This report must show your progress towards achieving the aims set out in your PDP.*

5. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*

6. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

7. *You must immediately tell 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 (6) above, to them:*

- a. Any organisation or person employing, contracting with, or using you to undertake nursing work;*
- b. Any prospective employer (at the time of application) where you are applying for any nursing appointment; and*
- c. 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).'*

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. It has taken account of the submissions made by Mr Webb. He outlined the background of the case and the outcome of the previous hearing. He then referred the panel to the relevant pages of the NMC bundle and made reference to your bundle which includes your reflective piece and training updates.

Mr Webb submitted that an order remains necessary to protect the public and is also in the public interest. He submitted that the new information the panel has before it today does not undermine the continuing necessity of an order. He submitted that you have been unable to provide evidence of complying with your conditions as you have not been working in a registered nursing role.

Mr Webb therefore invited the panel to extend the conditions of practice order and that the length of time is a matter for the panel.

The panel also had regard to the submissions made by Ms Upadhyay. She referred the panel to your reflective piece which revolves around your employment, your strengthening of practice, your training updates, the challenges you have faced, and your health. Further, she referred the panel to your three recent character references.

Ms Upadhyay informed the panel that you were previously working in a Band 3 role, but for the last 17 months, you have been working in a Band 4 Assistant Practitioner role and continued to work at Sirona Care and Health. She submitted that you have made very slow but steady progress towards your ultimate goal which is to practice unrestricted. She told the panel that your current role is the role of a non-registered practitioner. She submitted that you had wished to take the NMC's test of competence and that you successfully asked your employer to fund the test. However, you found out that the test was not open for you and only to those who have formally left the register and are trying to re-join. She submitted that this is something you wanted to do to improve your own skills and confidence, and now you have 'somewhat shifted' plans.

Ms Upadhyay told the panel that you are going to continue to look for a Band 5 registered nursing post at your current workplace. She submitted that you would continue to undertake internal or external training to strengthen your skillset. She then referred the panel to your intensive training record which sets out all the training you have completed in the last 18 months and also referred the panel to your reflective piece whereby you state that you do this training in your own time as you wish to progress. You are aware that you have not been able to obtain practical nursing practice as you are in a non-registered role. You have also voluntarily signed up and paid for a further medications administration course and are part-way through it.

Ms Upadhyay referred the panel to one of your references from the Assistant Locality Manager at your workplace which raises a few concerns. [PRIVATE]

Ms Upadhyay told the panel that you accept that your fitness to practice is currently impaired but that you continue to engage with the NMC and strengthen your practice by undertaking training, both voluntary and involuntary. She therefore invited the panel to confirm the conditions of practice order in its current form for a period of 9 months to allow you time to apply for Band 5 registered nursing positions, to complete your supernumerary period, and to provide evidence of working in a registered nursing role.

You gave evidence under affirmation. You told the panel that, despite the challenges you are faced with, you are very keen to get back to your nursing career as soon as possible. In response to the panel, in relation to what actions you took following the meeting you had with the Assistant Locality Manager at your workplace, you said that you were disappointed with the reference she gave you. [PRIVATE]. You clarified that there were two historic complaints made against you but that you have continued to work on your communication skills and how you handle difficult situations by being professional at all times.

You told the panel that at the next review hearing you would expect to have obtained a Band 5 registered nursing role, have completed all the requirements that have been asked of you, and provide comprehensive evidence of safe and effective practice. You said that you have complete backing from your managers to move into a Band 5 registered role, and that you are just waiting for one to become available. You think a period of 9 months would be more than enough to allow you time to do what you need to do.

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.

The panel noted that the last reviewing panel found that you looked beyond the impact your failings had on you, and discussed the impact of your conduct on patients, colleagues and the wider nursing profession. It was satisfied that you were remorseful and concluded that your insight had developed since the previous hearing and you now understood how your actions impacted others. At this hearing, the panel found you to have sufficient insight and an understanding of your actions. In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the intensive training you have undertaken and your reflective piece which addresses insight into your wrongdoings. The panel found you to be ambitious and resilient, and that you have made efforts to get your nursing career back on track.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. The panel noted that the last reviewing panel determined that you had not been able to fully remediate your practice as you were unable to demonstrate compliance with the conditions of practice in a registered nursing role. Today's panel has heard that you are currently not in a registered nursing role and have been unable to demonstrate safe and effective practice. In light of this, this panel determined that you are still liable to repeat matters of the kind found proved. 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 next considered whether imposing a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have been unable to comply with your conditions of practice due to your current employment status but are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions could be formulated which would protect patients during the period they are in force. The panel was

of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 14 May 2023. The panel determined that 12 months would allow you sufficient time to find and gain a Band 5 position, and to demonstrate within your post your competence in a Band 5 role to assist any future panel. The panel noted that should you find a Band 5 role sooner, you are able to request an early review.

The panel therefore decided to confirm the following conditions which it considered are appropriate and proportionate in this case:

'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 tell the NMC within 7 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.
2. You must ensure that you are supervised by your line manager or a Band 6 or above registered nurse any time you are working. This supervision does not require direct observation, except when related to medication administration as outlined in condition 3.
3. In relation to administering medication, your supervision must consist of working at all times whilst being directly observed by a registered nurse of Band 6 or above.

4. You must work with your line manager, mentor or nominated deputy to create a personal development plan (PDP). Your PDP must address the concerns about medication management, patient care and record keeping. You must:
 - a. Send your case officer a copy of your PDP before the next review.
 - b. Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.
 - c. Send your case officer a report from your line manager every three months. This report must show your progress towards achieving the aims set out in your PDP.

5. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.

6. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.

7. You must immediately tell 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 (6) above, to them:
 - a. Any organisation or person employing, contracting with, or using you to undertake nursing work;
 - b. Any prospective employer (at the time of application) where you are applying for any nursing appointment; and
 - c. 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).'

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 14 May 2023 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.

This will be confirmed to you in writing.

That concludes this determination.