

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

**Substantive Order Review Hearing
Tuesday, 18 July 2023**

Virtual Hearing

Name of Registrant: Lisa Warttig

NMC PIN 13E1629E

Part(s) of the register: Registered Nurse – Adult Nursing (16 September 2013)

Relevant Location: Barnsley

Type of case: Misconduct

Panel members: Rachel Ellis (Chair, lay member)
Beth Maryon (Registrant member)
Rachel Cook (Lay member)

Legal Assessor: Lachlan Wilson

Hearings Coordinator: Muminah Hussain

Nursing and Midwifery Council: Represented by Unyime Davies, Ms Davies

Miss Warttig: Present and not represented

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (18 months)
to come into effect at the end of 26 August 2023 in
accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order.

This order will come into effect at the end of 26 August 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of six months by a Fitness to Practise Committee on 27 January 2023.

The current order is due to expire at the end of 26 August 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse:

1) Breached an interim conditions of practice order imposed by a panel of the Nursing & Midwifery Council's Investigating Committee on 12 June 2019 stating "You must not at any time be involved in the management or administration of medication unless under the direct supervision of another registered nurse";

a) On 7 December 2019 by:

*i) Requesting a student nurse to countersign for Oramorph without direct supervision of another registered nurse. **[Proved by admission]***

*ii) Administering Oramorph to unknown patient without direct supervision of another registered nurse. **[Proved by admission]***

b) On 10 December 2019 by:

*i) Requesting a student nurse to countersign for Morphine Sulphate and/or Oramorph without direct supervision of another registered nurse. **[Proved by admission]***

*ii) Administering Morphine Sulphate and/or Oramorph to unknown patient without direct supervision of another registered nurse. **[Proved by admission]***

2) ...

3) *On 7 December 2019, failed to have controlled drug, 10mg of Oramorph, second checked when it was administered and/or the controlled drug book signed by the second checker. **[Proved]***

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, your 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, 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 49

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) ...'

The panel concluded that limbs a, b and c of this test were engaged.

Whilst there is no evidence to suggest that your actions caused actual harm to patients, the failure to comply with the interim conditions of practice order and in failing to have controlled drug second checked when it was administered and/or the controlled drug book signed by the second checker put patients at risk of significant harm. Furthermore, having breached multiple provisions of the Code, the panel determined that your misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that

confidence in the nursing profession would be undermined if its regulator did not find your fitness to practise to be impaired.

Regarding insight, the panel noted that you had made admissions to charge 1 at the outset of the hearing and have taken responsibility for your failures. The panel also noted that during your evidence, you have told the panel that you would not put yourself in a similar situation again, as you have learnt from this experience and that you would comply with the interim order.

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 you have remedied your practice. The panel took into account relevant training you have undertaken on medication administration and management and the reflective piece you have provided. However, the panel is of the view that there is a risk of repetition as you have not used your training in practice. The panel noted that this was not a lack of competence case, but a case where you did not apply your knowledge in practise. It therefore was of the view that you had not taken sufficient steps to strengthen your practice and demonstrate that you could handle practising in a high pressured environment without making the same failures. The panel noted that you said you did not have a 'clear mind' during the incidents in 2019. It did not have evidence to show that you would be able to respond differently now if you were practising.

The panel took into account the NMC's guidance on insight. It was of the view that you have demonstrated some insight, but this was not sufficient. You completed some appropriate learning, provided a reflective piece and during your oral evidence you showed some self-awareness about your past performance. However, the panel determined that there was insufficient understanding of why in a pressured working environment you did not adhere to the interim conditions of practice order for medication management.

Therefore, in having regard to the above, the panel considered there to be insufficient evidence to demonstrate that you had remediated your misconduct. The panel was of the view that you have not demonstrated a sufficient level of insight into the concerns identified. The panel also did not have any evidence before it to allay concerns that you may currently pose a risk to patient safety. It noted that this was because you did not have an opportunity to practise. In the absence of any evidence to the contrary, it considered there to be a risk of repetition and consequently a risk of unwarranted harm to patients in your care, should adequate safeguards not be imposed on your nursing practice. Therefore, the panel 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.

The panel considered there to be a public interest in the circumstances of this case. The panel found that the charges found proved are serious. It was of the view that a fully informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

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

The original panel determined the following with regard to sanction:

'The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 6 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.'

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.'

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 not at any time be involved in the management or administration of medication unless under the direct supervision of another registered nurse.

2. You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about medication administration and management. You must:

- Send your case officer a copy of your PDP before the next review hearing.*

- Send your case officer a report from your line manager, mentor or supervisor every month. This report must show your progress towards achieving the aims set out in your PDP.*

3. You must engage with your line manager, mentor or supervisor monthly to ensure that you are making progress towards aims set in your PDP, which include:

• *Meeting with your line manager, mentor or supervisor monthly to discuss your progress towards achieving the aims set out in your PDP.*

4. You must send the NMC a report seven days in advance of the next NMC hearing or meeting from either your line manager, mentor, or supervisor.

5. You must keep the NMC informed about anywhere you are working by:

a) Telling your case officer within seven days of accepting or leaving any employment.

b) Giving your case officer your employer's contact details.

6. You must keep the NMC informed about anywhere you are studying by:

a) Telling your case officer within seven days of accepting any course of study.

b) Giving your case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:

a) Any organisation or person you work for.

b) Any agency you apply to or are registered with for work.

c) Any employers you apply to for work (at the time of application).

d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

8. *You must tell your case officer, within seven days of your becoming aware of:*

a) Any clinical incident you are involved in.

b) Any investigation started against you. c) Any disciplinary proceedings taken against you.

9. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

a) Any current or future employer.

b) Any educational establishment.

c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

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, submissions from Ms Davies on behalf of the NMC and your submissions.

Ms Davies outlined the background of the case.

You clarified for the panel that you were not convicted of theft, but for the possession of controlled drugs.

You informed the panel that you have not been able to successfully secure a nursing job although you do want to. You submitted to the panel that you have regretted the mistake you made and have taken accountability for what you have done.

You outlined for the panel that you believe that your applications for nursing roles have been impacted by the Disclosure and Barring Service (DBS) check which confirms your conviction for the possession of controlled drugs. In addition, you told the panel that the roles you have applied for were not able to support you with the current conditions of practice. You are currently undertaking two jobs and you informed the panel that your work ethic has never altered.

When asked to clarify the private work that you are undertaking, you confirmed that it was domestic work. You were asked if you had undertaken any training and you replied that you had not done any courses. You informed the panel that you have been concentrating on working and applying for nursing jobs, but you are in contact with previous colleagues and reflecting with them.

You were asked why there was not a reflective piece for today's hearing. You replied that you had submitted reflective pieces and testimonials for the previous hearings, however you have no new information and have not been able to secure a nursing role.

When asked why you wanted to resume your nursing career, you informed the panel that when you left school, it was clear that nursing was the career you strived for. You told the panel that you have always wanted to do this, and you are happy to do this. You know that this is not an easy job, and it is stressful, but you enjoy the stress and have passion for it. You cannot imagine doing anything else.

Ms Davies submitted that you have been engaging fully with the NMC.

Ms Davies submitted that your fitness to practise remains impaired. She submitted that the panel would be better assisted if there were reflective pieces, testimonials, references and evidence of further training.

Ms Davies submitted that the panel may find that without a reflective piece, sufficient insight has not been demonstrated. She submitted that you have not had the opportunity to practise as a registered nurse so the concerns regarding patient safety are still present, and there still remains a risk of repetition and a risk of harm to patients.

Ms Davies submitted that you have made it clear that you want to return to nursing, and you are making efforts to do so.

You submitted to the panel that you wholeheartedly regret what has happened. You informed the panel that prior to this misconduct, your work has been excellent, and you have had no previous failures. You submitted that you are not excusing what you did, but at the time the misconduct took place, everything happened at the same time and the situation itself was daunting and stressful.

You submitted that you have tried very hard to reflect, to learn and to get back into nursing so that you can prove this is not something that will be repeated.

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 original panel found that you had insufficient insight. At this hearing, although you expressed remorse at what had happened, you did not provide any further understanding of why you had not adhered to the interim conditions of practice order as had been recommended by the previous panel. Whilst the panel accepted that the reason you had not provided a written reflection because your circumstances have not changed, because of this, the panel found that your insight had not been fully developed.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your submissions. The panel noted that you had not been practising as a registered nurse, therefore had not been able to demonstrate that you have strengthened your practice or remediated the concerns the previous panel had.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel has heard submissions from you and concluded that there is no evidence that your insight is now fully developed or that you have been able to demonstrate strengthened practice. In light of this, this panel determined that you are 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 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 conditions of practice due to your current employment status, but you are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no deep-seated attitudinal problems. 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 18 months, which will come into effect on the expiry of the current order, namely at the end of 26 August 2023. It considered an 18-month period to be appropriate to enable you to have sufficient time to apply for and secure a nursing role, and then evidence a period of compliance with the conditions of practice order.

The panel decided to vary the conditions to reflect that the issues raised relate to the administration and management of controlled drugs specifically. Conditions one and two have been amended accordingly, and the previous conditions three and four have been incorporated into the new condition two.

The panel 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 not at any time be involved in the management or administration of controlled drug medication unless under the direct supervision of another registered nurse.
2. You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about controlled drug medication administration and management. You must:
 - Send your case officer a copy of your PDP before the next review hearing.
 - Engage with your line manager, mentor or supervisor monthly to ensure that you are making progress towards aims set in your PDP
 - Send the NMC a report seven days in advance on the next NMC hearing or meeting from either your line manager, mentor or supervisor.
3. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer’s contact details.
4. You must keep us informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
5. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
6. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 August 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.

Any future panel reviewing this case would be assisted by:

- Any updated testimonials or references from your current employer and/or colleagues about your conduct and performance (in a healthcare or non-healthcare role);
- An updated reflective piece which demonstrates insight as to why complying with the conditions of practise order is important; and
- Evidence of professional development, such as any updated training you have undertaken.

This will be confirmed to you in writing.

That concludes this determination.