

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

**Substantive Order Review Hearing
Thursday 9 March 2023**

Virtual Hearing

Name of Registrant: Mrs Patricia Ann Atkin

NMC PIN 81J0672E

Part(s) of the register: RN5, Registered Nurse – Learning Disabilities
(Level 1) December 1993
RN6, Registered Nurse – Learning Disabilities
(Level 2) December 1983

Relevant Location: Lincolnshire

Type of case: Misconduct

Panel members: Jane Kilgannon (Chair – Lay member)
Jim Blair (Registrant member)
Jonathan Storey (Lay member)

Legal Assessor: Ben Stephenson

Hearings Coordinator: Vicky Green

Nursing and Midwifery Council: Represented by George Hugh-Jones KC, Case Presenter

Mrs Aktin: Not present and not represented in her absence

Order being reviewed: Suspension order (2 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of 12 April 2023 in accordance with Article 30(1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Atkin was not in attendance and that the Notice of Hearing (the Notice) had been sent to her registered email address by secure email on 8 February 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Atkin's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Atkin has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Atkin

The panel next considered whether it should proceed in the absence of Mrs Atkin. It had regard to Rule 21 and heard the submissions of Mr Hugh-Jones who invited the panel to continue in the absence of Mrs Atkin.

Mr Hugh-Jones submitted that Mrs Atkin has not responded to the Notice and she has not made an application to adjourn these proceedings today. He submitted that there is a history of Mrs Atkin's non-attendance at the substantive order review hearings. Furthermore, Mr Hugh-Jones submitted that Mrs Atkin has not recently engaged with the NMC. Nevertheless, he submitted that proceeding in the absence of a registrant should be considered with considerable caution and referred the panel to the relevant case law. Mr Hugh-Jones submitted that there is a public interest in the expeditious disposal of cases.

The panel had sight of an on table document which set out the NMC's unsuccessful attempts to contact Mrs Atkin. It noted that the NMC emailed Mrs Atkin on 20 February 2023, a telephone call log dated 7 March 2023 and a further email dated 7 March 2023.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Atkin. In reaching this decision, the panel has considered the submissions of Mr Hugh-Jones and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Atkin.
- There is a pattern of non-attendance at the three previous review hearings and Mrs Atkin has not engaged with the NMC since May 2020.
- Given the NMC's unsuccessful attempts to contact Mrs Atkin and her history of non-engagement, the panel considered that it was likely that she had voluntarily absented herself.
- There is no reason to suppose that adjourning would secure her attendance at a future hearing.
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Atkin.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 12 April 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a substantive conditions of practice order originally imposed by a panel of the Fitness to Practise Committee on 12 July 2019. This order was reviewed on 7

January 2022 and a further conditions of practice order was imposed for a period of 6 months. On 1 July 2022, a reviewing panel decided to make a suspension order for a period of six months. The last reviewing panel decided to impose a further suspension order for a period of 2 months. The current order is due to expire at the end of 12 April 2023.

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

‘That you, a registered nurse, having agreed undertakings with the Nursing and Midwifery Council in respect of the regulatory concerns set out in Schedule 1:

1. *breached your undertakings in that you:*
 - a. *...*
 - b. *failed to comply with undertaking 6 requiring you to provide the NMC with evidence that you have successfully undertaken and passed a medicine’s management competency assessment which was to have included a minimum of ten supervised medication rounds.*

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

Schedule 1 - *That you made multiple errors relating to the management and administration of medication whilst employed as a nurse at Madeira Care Home.’*

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

‘The panel considered whether Mrs Atkin’s fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and

Midwifery Council (NMC) has defined fitness to practise as a registrant's suitability to remain on the register without restriction.

The panel had regard to all the documentation before it, including the NMC bundle which contained the decisions and findings of the previous panels.

The panel noted that both the original panel and the previous reviewing panels found that Mrs [Atkin's] fitness to practise was impaired. Whilst this panel has exercised its own judgement, it has found that Mrs Atkin's practice remains impaired. The panel considered that there was nothing before it to suggest that the concerns highlighted in Mrs Atkin's practice have been addressed or that the risk of repetition in this case has been reduced.

The panel was aware that Mrs Atkin has not engaged with the NMC since May 2020, despite the two previous panel's outlining what would be beneficial to any future panel reviewing this order. This panel had no up-to-date information regarding Mrs Atkin's career intentions, whether in nursing or otherwise. As such, the panel could not be satisfied that Mrs Atkin no longer poses a risk to the public. 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.'

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

'Having found Mrs Atkin'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 considered the imposition of a caution order but determined that, due to the ongoing risks outlined in this case, an order that does not restrict Mrs Atkin's practice would not be appropriate in the circumstances.

The panel next considered whether imposing a conditions of practice order on Mrs Atkin's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel bore in mind that Mrs Atkin has not engaged with these proceedings since May 2020, she has not provided any evidence of steps taken to address the concerns in her practice, which have been highlighted by the previous reviewing panels, and she did not comply with her previous conditions of practice order (which was replaced with a suspension order at the last review). In these circumstances, the panel was not satisfied that Mrs Atkin would be compliant with a conditions of practice order. The panel therefore determined that a conditions of practice order would not be appropriate.

*The panel considered the imposition of a further suspension order. Given that Mrs Atkin has not engaged with her regulator since May 2020 and has not provided any evidence regarding her future career intentions as a nurse or otherwise, nor evidence of her strengthening her practice as requested, the panel determined that continuing with a suspension and review cycle would serve little purpose. On the evidence before the panel today, there appear to be two realistic options going forward: either to impose a striking-off order, or to allow the current order to lapse upon expiry. This latter process is fully explained in NMC Guidance **REV-3h**:*

'In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse, midwife or nursing associate's practice.

Taking this option is likely to be appropriate if:

- *the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- *the nurse, midwife or nursing associate doesn't want to continue practising, and*
- *the public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.*

*It is important that panels remember that the above factors are important in deciding whether to take no further action, and they should consider these against the general circumstances of the case in deciding what action to take. At this stage, all options are open to them, and the **usual factors in making sanction decisions** will still apply. They may need to impose a more restrictive order (including striking-off) if they decide it is necessary in the circumstances, including if the nurse, midwife or nursing associate has not engaged with the process, which will always be one of the important factors to consider.'*

The panel considered that in the circumstances of this case, allowing the order to lapse might be appropriate but the panel must be sufficiently satisfied that Mrs Atkin does not wish to continue practising as a nurse. There was no evidence before this panel of Mrs Atkin's intentions regarding continuing to practice as a nurse. However, the panel noted that this option had not been explained in correspondence to Mrs Atkin prior to this meeting. The panel was of the view that striking off Mrs Atkin at this stage may be premature.

It was of the view that a further short period of suspension would allow Mrs Atkin a final opportunity to engage with the NMC and provide the next reviewing panel with an update as to her future career intentions.

The panel determined that a suspension order would continue to both protect the public and satisfy the wider public interest. It considered that a period of two months was sufficient to allow Mrs Atkin time to contact the NMC and provide the next reviewing panel with a short update.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Atkin's 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 Hugh-Jones on behalf of the NMC.

Mr Hugh-Jones outlined the background of this case and drew the panel's attention to the decisions of the original panel and the subsequent reviewing panels. He referred the panel to the decision of the last reviewing panel who imposed a short suspension order and made Mrs Atkin aware of the option of allowing the order to lapse in certain circumstances. He drew the panel's attention to an email from Mrs Atkin to the NMC dated 16 November 2019 in which she stated that she wished to return to nursing in the future. Mr Hugh-Jones submitted that Mrs Atkin has not provided any recent updates in respect of her future intentions about returning to practice.

Mr Hugh-Jones submitted that medication management is an essential part of nursing and, despite it being six years after the charges arose, Mrs Atkin has not remediated her practice. He submitted that the NMC is neutral on what sanction is appropriate in this case and drew the panel's attention to the relevant guidance.

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 Mrs Atkin's fitness to practise remains impaired.

The panel had regard to the charge that was found proved and noted that Mrs Atkin failed to comply with an undertaking that required her to provide the NMC with evidence that she had successfully undertaken and passed a medicines management competency assessment which was to have included a minimum of 10 supervised medication rounds. The panel was of the view that medication management is a fundamental nursing skill and failures in this area have the potential to cause serious harm to patients. The panel was of the view that the misconduct identified in this case is remediable. Notwithstanding this, the panel noted that Mrs Atkin has failed to provide any evidence that she has strengthened her practice in the six years since that have elapsed since the charges arose. As a consequence of Mrs Atkin's non-engagement, the panel had no current or recent information about any remorse on her part, insight or attempts to strengthen her practice.

In the light of the above, the panel determined that there is a risk of repetition and a consequent risk of harm to patients. 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 Mrs Atkin's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Atkin'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 gave careful consideration to taking no further action and allowing the order to lapse. It had regard to the NMC Guidance on '*Allowing orders to expire when a nurse or midwife's registration will lapse*' (REV-3h. Last updated 13/01/2023), in particular the following:

'In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse, midwife or nursing associate's practice.

Taking this option is likely to be appropriate if:

- the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- the nurse, midwife or nursing associate doesn't want to continue practising, and*
- the public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.'*

The panel noted that Mrs Atkin's registration only remains active because of these proceedings and the suspension order. Having found that Mrs Atkin's fitness to practise is currently impaired, the panel was satisfied that the third bullet point was met, and if it decided to allow the order to expire and her registration to lapse, then this finding would be apparent should she decide to re-apply for admission to the NMC Register. However, given Mrs Atkin's lack of engagement and her previous express intention to return to nursing practice as stated in 2019, it could not be satisfied that she does not want to return

to nursing. The panel also took note of the guidance already cited that *'the nurse... will need to give the panel a clear explanation of their plans for the future away from nursing'*. Despite a reminder from the previous panel about the importance of providing evidence of her future career intentions as a nurse or otherwise, this panel has received no further information from Mrs Atkin in this regard. The panel therefore decided that it would be inappropriate to allow this order to expire in the circumstances.

The panel 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 Mrs Atkin's 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 Atkin's 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 a conditions of practice order would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Whilst medication errors and the associated risks could be managed by way of a conditions of practice order, the panel was of the view that given Mrs Atkin's lack of engagement since May 2020 and in the absence of any evidence that she is willing to comply with such an order, it would not be workable in these circumstances. The panel therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest in this case.

The panel next considered imposing a further suspension order. It had regard to the NMC sanctions guidance and amongst others, took into account the following factors:

- *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 Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour.*

The panel noted that the original charge related to Mrs Atkin's failure to comply with an undertaking in relation to medication management. Whilst at the substantive hearing there was no evidence of deep-seated personality or attitudinal problems, given Mrs Atkin's lack of engagement with the NMC and a failure to strengthen her practice and demonstrate competence in medication management and administration in the last six years, the panel was of the view that there are now concerns in this regard. The panel noted that there is no evidence that Mrs Atkin has repeated the errors since the substantive hearing, however it has identified a risk of repetition in view of the prolonged lack of demonstrated remediation. The panel noted that Mrs Atkin had previously demonstrated some insight into her misconduct, however, as she has not engaged with the NMC since May 2020, this panel had no information about her current level of insight or remorse.

The panel took into account the NMC guidance on a striking off order, including the following non-exhaustive list of key considerations:

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel was of the view that Mrs Atkin's lack of engagement with this process and her apparent unwillingness to address the shortfalls in her practice raise fundamental questions about her professionalism and her commitment to patient safety. The panel considered that Mrs Atkin has been afforded ample time to strengthen her practice and to engage with the NMC. The panel therefore determined that a further period of suspension would neither serve any useful purpose in the circumstances, nor address the public interest in this case. The panel determined that it was necessary to take action to prevent Mrs Atkin from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 12 April 2023 in accordance with Article 30(1).

This decision will be confirmed to Mrs Atkin in writing.

That concludes this determination.