

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

**Substantive Order Review Hearing
Thursday, 16 November 2023**

Virtual Hearing

Name of Registrant: Colleen Newlands

NMC PIN 19C0529O

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing (March 2019)

Relevant Location: Buckinghamshire

Type of case: Misconduct

Panel members: Phil Lowe (Chair, Lay member)
Amanda Revill (Registrant member)
Margaret Wolff (Lay member)

Legal Assessor: Marian Gilmore KC

Hearings Coordinator: Hamizah Sukiman

Nursing and Midwifery Council: Represented by Lauren Karmel, Case Presenter

Mrs Newlands: Present and represented by Jerome Burch, instructed by Royal College of Nursing (RCN)

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (24 months) to come into effect on 26 December 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, Mr Burch, on your behalf, made a request that parts of this case be held in private on the basis that *[PRIVATE]*. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Karmel, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application to the extent that *[PRIVATE]*.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to hold the hearing partially in private, *[PRIVATE]*

Decision and reasons on review of the substantive order

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

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

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 November 2022.

The current order is due to expire at the end of 26 December 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. Whilst employed at Salveo Care on 6 March 2020;*
 - a. Administered Resident D's medication to Resident C;*
 - b. Failed to inform Colleague A of the medication error in a timely manner;*
 - c. Told Colleague B that you had given Resident C new medication or words to that effect;*
 - d. Failed to ensure that Resident C was monitored for side effects of the wrong medication;*
 - e. Told Colleague B you would sort out the MAR for Resident C or words to that effect.*

- 2. Your actions in charges 1)b) and or 1)c) and or 1)d) and or 1)e) where dishonest in that you were seeking to cover up the fact you had given Resident C the wrong medication.*

- 3. Whilst employed at Eastleigh Care Home;*
 - a. On 12 June 2020 failed to sign confirmation that paracetamol had been administered to a Resident;*
 - b. On 12 June 2022 pre potted medication for multiple residents on the same tray;*
 - c. On 17 July 2020 left medication on side table after signing to confirm that it had been administered;*
 - d. On 26 August 2020 administered resident B's medication to Resident A.*

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 then considered whether Mrs Newlands' fitness to practise is currently impaired by reason of misconduct. The panel determined that all 4 limbs of the Dame Janet Smith as set out in the case of CHRE v Nursing and Midwifery Council

& Grant [2011] EWHC 927 are engaged. The panel determined that Mrs Newlands caused harm to patients, put the nursing profession into disrepute and breached the fundamental tenets of the profession by acting dishonestly.

The panel, having read the agreement, requested a copy of the reflective piece noted in paragraph 43. Having been provided with a copy of that reflective piece and considering its contents, the panel then considered impairment fully. It was of the view that Mrs Newlands had provided some insight within her reflective piece comments, but this was developing and tended to be descriptive and without adequate analysis.

In the panel's judgement, Mrs Newlands' misconduct is capable of being remedied through further training and supervision. The panel noted that she had stated what she would do in the future and had referred to undertaking online training, however there is no evidence of this. For this reason, there remains a risk of repetition.

For all the above reasons, the panel decided that Mrs Newlands' fitness to practice is currently impaired by reason of her misconduct. This finding is made on both public protection and public interest grounds.

In this respect the panel endorsed paragraphs 23 to 52 of the provisional CPD agreement, particularly 46 and 47 in regard to impairment.'

The original panel determined the following with regard to sanction:

'The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The dishonesty identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on Mrs Newlands' registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an

appropriate sanction. The SG states that 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. In particular, the dishonesty was short lived and not repeated.

It did go 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 Newlands' case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.'

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. The panel considered the submissions made by Ms Karmel on behalf of the NMC. She outlined the background of the case, and the outcome of the substantive hearing on 28 November 2022, including the original panel's acceptance of the Consensual Panel Determination (CPD).

Ms Karmel outlined the papers you submitted to this panel. She referred the panel to copies of certificates which show training you completed, and she submitted that the certificates pre-date the substantive hearing. She further submitted that there has been no further evidence of retraining since the substantive hearing.

She then referred the panel to an undated reflective piece, which was indexed on 4 August 2023. She submitted that the piece is a few months old. She informed the panel that you are currently working in an advisory capacity without face-to-face nursing, but you need your NMC pin to remain in the role. You request the suspension order be lifted, and for you to be supervised when undertaking medication administration or clinical practice. Ms Karmel submitted that it is unclear what 'clinical practice' would entail. She also referred the panel to another reflective piece, which was also undated but indexed on 5 October 2023, and she submitted that you continue to deny the allegation of dishonesty.

Ms Karmel referred the panel to testimonials from your current employer, which outline your role and their willingness to support you if a conditions of practice order was imposed.

She referred the panel to your 'future plans' document and submitted that it does not clearly outline your future plans in detail and appears to be in response to previous interim orders. *[PRIVATE]*

Ms Karmel invited the panel to consider all relevant case law and guidance on the review of a substantive order. She submitted the panel should consider five factors. Firstly, whether conditions have been complied with, which Ms Karmel submitted is not relevant in this case. Secondly, whether you have demonstrated insight. She submitted that, based on your reflective piece, you have demonstrated some insight but continue to deny

allegations of dishonesty. She urged the panel to carefully consider the denial. Thirdly, whether you have taken steps to maintain your skills and knowledge. She submitted that you have not, as your training certificates pre-date the substantive hearing, and there is no evidence of strengthened practice since the hearing. Fourthly, whether you have had a record of safe practice since the last hearing, which Ms Karmel submitted you have not given you have not worked as a nurse in a clinical role. Finally, whether the risks remain. She submitted that the risks remain from findings approved by the original panel within the CPD that you have put patients at risk of harm and brought the profession into disrepute.

She submitted that the persuasive burden on you to demonstrate insight and strengthened practice has not been met, and you have not persuaded the panel that your past impairments have been remedied. She invited the panel should find that your fitness to practise remains impaired.

With regard to sanction, Ms Karmel submitted that to impose no order would be inappropriate in light of the risks outlined. She submitted that there are two reasonable outcomes, pending any submissions made by Mr Burch or clarification provided by you. She submitted that the first would be an extension of the current suspension order. She submitted that this would be workable and would adequately protect patients if the panel is of the view that you have not shown evidence of substantial clinical development and have limited insight in your reflection.

She further submitted that the panel could impose a conditions of practice order. She submitted that there are workable conditions which should consider the observations made within the testimonials. She invited the panel to consider your employer's willingness to support you with a conditions of practice order. Due to the lack of further training, she submitted that conditions should address the areas of concern outlined in the substantive hearing, including medication administration. She submitted that a conditions of practice order would give you a further opportunity to demonstrate your improving practice, in respect of your clinical and professional development.

Ms Karmel outlined that the decision is for the panel, and the panel should impose the least restrictive sanction that is appropriate.

The panel also considered Mr Burch's submissions on your behalf, and some new documentation he provided to the panel. He submitted that the reflective piece referred to by Ms Karmel is incorrectly indexed as October 2023, but it was written in 2022. He further submitted that, since that reflective piece, you have accepted that your actions were dishonest.

Mr Burch invited the panel to revoke the suspension order. He submitted that you qualified in 1994 in South Africa, and you have been involved in nursing since 1988, with your six-year training considered. In this time, you have never come before your regulator with the exception of this case. He informed the panel that you are currently working in an advisory capacity as a clinical interviewer. You started this role in February 2022. The role is not patient-facing and involves interviewing other nurses and health professionals.

He further informed the panel that, with regard to your second referral made to the NMC, you were working as a live-in support worker, rather than as a nurse, from September 2020 until the end of 2020. You briefly returned to South Africa, where you continued to work in a support capacity.

Mr Burch informed the panel that *[PRIVATE]*.

He referred the panel to the testimonials submitted by your employer, which stated:

'... During the interview process, Ms Newlands was forthcoming and transparent about the NMC allegations, providing us with a thorough and honest account of the situation. We believe this openness demonstrates her commitment to professional accountability and improvement.'

Based on my extensive experience working with Ms Newlands we have full confidence that she is fit to practice in the capacity of a nurse interviewer with a valid NMC PIN restricted to an advisory role. While Ms Newlands may not be engaged in bedside nursing or direct patient care, I am certain that her expertise and advisory role is an invaluable asset to our organisation ...'

Mr Burch submitted that this highlights your honesty and is a positive review of your character.

He further submitted that, since the suspension order, your current role has allowed you to reflect on your past impairment as you interview other healthcare professionals about what they would do in similar situations. He drew the panel's attention to the 'future plans' document, which stated:

'... Over and over again I am asking candidates how they would handle a medication error and over and over again I hear the answers of doing everything I didn't do. I feel sick that I didn't do these things as it seems to me, now to be the most natural thing to do.

Although it was very stressful, the appeal process has taught me many things and given me the ability to reflect on my nursing career and how I wish to continue.

There is no doubt that this process has changed me and I am not the same person as I was last year, however I truly believe everything happens for a reason and if nothing else it has made me more determined than ever to continue in this career ...'

Mr Burch further submitted that the training certificates show the training, including in handling medication and avoidance of drug errors, which you completed in 2023. He accepts there is no detail as to the content of the training, but he submitted that there was considerable literature included within these courses.

He submitted that the parties in the substantive hearing agreed that your dishonesty is remediable. He submitted that you have demonstrated a remediation of concerns through your actions since 2020.

Mr Burch submitted that there is no risk to the public as you are unable and do not want to work in a patient-facing nursing role, [PRIVATE]. He further submitted that your current role does not pose a risk to the public, and you have had no issues working in your current role.

With regard to public confidence, Mr Burch submitted that the suspension order has been in place for 12 months. During that year, no further issues occurred, and you have maintained a role which is not patient facing. He further submitted that you have completed further training and you have received supportive feedback from your employer. He submitted that a well-informed member of the public would not be shocked if your order was revoked. Consequently, he invited the panel to revoke the suspension order.

Mr Burch further submitted that, if the panel were minded to impose an order, a conditions of practice order would be the most appropriate. He invited the panel to consider a condition restricting your ability to conduct face-to-face nursing roles.

In light of the new documentation provided, Ms Karmel submitted that you have not submitted a reflective piece since the substantive hearing, despite the original panel's finding that a future panel would be assisted by such a piece. She further submitted that the training certificates provide no further details, beyond its titles, as to the contents of the course. She submitted that her earlier submissions remain, and your fitness to practise remains impaired.

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, at the substantive hearing, found that you demonstrated a limited but developing insight. At this hearing, this panel concluded that you have demonstrated more insight regarding your dishonesty. The panel considered your reflective piece and concluded that you are no longer impaired with regard to your dishonesty.

With regard to your strengthened practice, the panel considered the certificates of training you provided. However, the panel also considered that you have not worked in a patient-

facing role since the suspension order, and you have not been able to demonstrate strengthened practice. The panel noted that you are currently not working in a nursing role, but concluded that the risks to patients remain in absence of strengthened practice.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel concluded there has been no remediation regarding your past impairment involving medication administration. Therefore, this panel determined that you remain 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 a caution order would be inappropriate in view of the continuing levels of risk.

The panel considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, your reflective statement shows sufficient insight regarding your dishonesty. The panel concluded that one area of concern remains, namely medication administration. The panel determined that conditions could be formulated to address this concern. The panel also considered your employer's willingness to support you if conditions were imposed upon your practice.

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

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

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

1. If you are working in a role requiring medication administration, you must not administer medication unless directly supervised by another registered nurse until you are assessed as competent to do so independently by a Band 6 nurse or above.

You must provide the NMC with a copy of the assessment within 14 days of being deemed competent.

2. 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.
3. 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.
4. 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.
5. 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.
6. 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 for two years. The panel concluded that this would give you the opportunity to find a nursing role, should you wish to do so, and comply with the conditions. The panel also considered that you can request an early review of these conditions if your circumstances change.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 26 December 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:

- A statement detailing your career intentions.

This will be confirmed to you in writing.

That concludes this determination.