

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

**Substantive Meeting
Tuesday, 21 November 2023 – Wednesday, 22 November 2023**

Virtual Meeting

Name of Registrant: Jenny Louise Steer

NMC PIN 9314961E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nurse – 29 July 1996

Relevant Location: Kettering

Type of case: Misconduct

Panel members: Patricia Dion Richardson (Chair, Lay member)
Esther Craddock (Registrant member)
Barry Greene (Lay member)

Legal Assessor: John Bromley Davenport KC

Hearings Coordinator: Opeyemi Lawal

Miss Steer: Not present and unrepresented

Facts proved: Charges 1a and 1b

Fitness to practise: Impaired

Sanction: **Suspension order (12 months)**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Miss Steer's registered email address by secure email on 12 October 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation and the fact that this meeting will be heard virtually on or after 20 November 2023.

In the light of all of the information available, the panel was satisfied that Miss Steer has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse, whilst employed as the Clinical Lead at Country View Nursing Home:

1. Between 1 December 2019 and 1 July 2020 on one or more occasions consumed alcohol:
 - a. Whilst on shift;
 - b. In the presence of colleagues;

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

Background

'Miss Steer was referred to the NMC on 20 October 2020 by the Home Manager.

The alleged facts are as follows:

Miss Steer commenced employment at the Home as a Staff Nurse in 2012. She was promoted to Clinical Lead, on a part time basis, in 2019.

In her role, Miss Steer was in charge of all nursing care including dispensing medication and undertaking dressing changes for residents. On every shift, she had the responsibility for 12 members of staff and 29 residents. The majority of residents had complex health issues.

Between December 2019 and June 2020, on almost every shift she was on duty as Clinical Lead, she consumed alcohol with several junior staff members. When the Matron was made aware of this and queried her actions, Miss Steer said that she had been “having tasters whilst on duty”.

On 30th June 2020, Miss Steer was suspended from duty and a local investigation into this matter was conducted.

During the local investigation, Miss Steer admitted to drinking whilst on duty but stated that she had only offered and not encouraged staff members to drink alcohol. She said that the alcohol that she and other staff members had consumed had been received as gifts from residents’ family members. She further said that the reason for drinking on shift was to bring the team together.

Miss Steer was summarily dismissed from her role on 7 August 2020 on the grounds of gross misconduct. She appealed against her dismissal however, the decision of the Home’s disciplinary hearing was upheld.’

Decision and reasons on facts

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will

by Jenny that it wouldn't happen again and when I returned to the home after shielding in June 2020 I spoke with Jenny again and she told me it definitely wasn't happening.'

In the disciplinary meetings during the internal investigations, Miss Steer accepted that she had offered alcoholic drinks to colleagues and junior members of staff whilst on duty.

The panel considered all the evidence before it and acknowledged that Miss Steer accepted the concerns raised against her on multiple occasions, notably during the two internal meetings on 10 July and 3 August 2020, held as part of the disciplinary process.

In Miss Steer's correspondence with the NMC dated 15 November 2020, she wrote:

'I do recognise that the consumption of the small amount of alcohol, was wrong. I have reflected on my actions and take full responsibility for my part in this.'

Therefore, the panel finds this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Steer's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Miss Steer's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the NMC referred the panel to the case of *Roylance v GMC* (No. 2) [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") in making its decision.

'The NMC identified the specific, relevant standards where Miss Steer's actions amounted to misconduct, in which Code 20.1 was breached.'

The NMC submitted that the misconduct is serious because Miss Steer consumed alcohol whilst on shift putting patients under her care at significant risk of harm. Further, she consumed the alcohol in the presence of colleagues and with junior colleagues, displaying a complete disregard for her role and responsibilities as the Clinical Lead. Her actions also compromised the safety of residents and those junior members of staff who consumed alcohol at the Home. As the Clinical Lead, Miss Steer was in a position of trust and authority, and instead of promoting safe practice she encouraged unsafe and unprofessional conduct at the Home.

The misconduct in this case is serious and brought the nursing profession into disrepute as members of the public and in this case the residents' families would be extremely concerned to learn of residents being treated or under the care of staff who were under the influence of alcohol. This type of behaviour undoubtedly causes damage to the reputation of the nursing profession.

Miss Steer's actions also breached fundamental tenets of the profession. Nurses are expected to provide a high standard of care, and act with integrity and

professionalism at all times. The registrant's misconduct which involved her drinking whilst on duty and in front of colleagues, completely contradicts those fundamental tenets of nursing.

By consuming alcohol at the Home, Miss Steer's actions had the potential to put patients at unwarranted risk of harm as it could have impaired her judgement and slowed her responses. Miss Steer's colleagues were also consuming alcohol, seriously compromising the health and safety of the residents in their care.

The NMC submitted that Miss Steer has displayed limited insight, because while she made some admissions, her explanation and justification for the consumption of alcohol is concerning. Miss Steer explained that quantities of alcohol would be brought into the Home as gifts from residents' families. She stated "I feel we were never at any time unfit for work through consuming small amounts of alcohol." She also blamed her actions on the pandemic and being short-staffed. However, the NMC submitted that her drinking took place just prior to the pandemic. This demonstrates that Miss Steer has limited insight into her actions.

The NMC submitted that there is no evidence of any training, or any reflection undertaken by Miss Steer to address the misconduct in this case and that there is a continuing risk to the public due to her lack of full insight and failure to demonstrate any meaningful reflection.

There is a significant risk of harm to the public were the registrant allowed to practise without restriction. Therefore, a finding of impairment is required for the protection of the public.'

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

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

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Steer's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Steer's actions amounted to a breach of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Steer's actions were not isolated incidents and she offered alcoholic drinks to colleagues and junior staff whilst on every one of her shifts, which was twice a week during the period detailed in the charge.

The panel found that Miss Steer's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Steer's 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. 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/their fitness to practise is impaired in the sense that S/He/They:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel finds that residents were put at risk of harm as a result of Miss Steer's misconduct. Miss Steer's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel were mindful of the difficulties within the nursing home working environment during the Covid pandemic when families and friends were unable to meet with their relatives. The panel was of the view that there was a duty on the nursing home staff during this time to ensure that professional standards of care continued to be delivered to the residents. The panel considered that Miss Steer's misconduct in 'normalising' the drinking of alcohol on duty was a serious breach of the professional standards set out in the Code.

Regarding insight, the panel took into account Miss Steer's reflective piece and the email sent to the NMC on 15 November 2020. The panel noted that in her reflective piece, which is undated, she acknowledged that she had made a mistake by drinking alcohol on shift and offering alcoholic drinks to her colleagues. Miss Steer also expressed remorse for her actions. However, the panel were of the view that Miss Steer is yet to address her understanding of how her actions might have put residents at risk of harm and how this might have impacted negatively on the reputation of the nursing profession. Accordingly, the panel determined that whilst Miss Steer had demonstrated some insight it was limited.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Steer has taken steps, since she was notified of the referral to the NMC, to address the concerns raised by providing further insight or strengthening her practice. The panel was not provided with any additional evidence from Miss Steer for the purposes of today's meeting as to further insight or attempts she had made to strengthen her practice.

In the absence of this further evidence, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and

protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required and that a fully informed member of the public would consider that a finding of impairment was necessary.

In these circumstances, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Steer's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Miss Steer's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that the NMC had advised Miss Steer that it would seek the imposition of a striking-off order if it found Miss Steer's fitness to practise currently impaired.

The NMC made submissions on each of the sanctions available to the panel:

'Taking no further action or imposing a caution order would be inappropriate as they would not reflect the seriousness of the misconduct and would not protect the public or maintain public confidence in the profession.'

The concerns in this case do not relate to clinical failings, instead they relate to the Miss Steer consuming alcohol whilst on shift and in the presence of junior members of staff. Her actions indicate that she has an attitudinal/behavioural problem which cannot be addressed by a conditions of practice order. There are no conditions which could adequately address the concerns in this case, nor can conditions address the registrant's blatant disregard for patient safety. It would therefore not be appropriate or proportionate in these circumstances to impose conditions as they would not adequately protect the public or satisfy the significant public interest in this case.

A suspension order would only temporarily protect the public. The misconduct in this case does not consist of a one-off incident; there is a pattern of misconduct. Miss Steer has been consuming alcohol whilst on duty over a lengthy period of time. She has shown limited insight into her actions and displayed a complete disregard for the safety of the residents. She does not appear to understand the seriousness of the misconduct and the implications it could have had on the residents. There are underlying attitudinal concerns which cannot be addressed by a temporary removal from the register. A suspension order would not be sufficient to protect the public, satisfy the public interest in this case or mark the seriousness of the misconduct.

The only appropriate and proportionate sanction in this case is that of a striking-off order. Miss Steer was in a senior position; her actions of consuming alcohol and while in the presence of junior colleagues, raises fundamental concerns about her professionalism and trustworthiness as a nurse. She has attempted to deflect blame and responsibility, therefore her insight is limited. Miss Steer's misconduct is serious and fundamentally incompatible with her remaining on the register.'

Decision and reasons on sanction

Having found Miss Steer's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Steer's seniority within the nursing home
- Lack of scrutiny by family members and senior staff as a result of the COVID-19 visiting restriction
- Lack of insight into failings
- A pattern of misconduct over a period of time
- Conduct which put residents at risk of suffering harm

The panel also took into account the following mitigating features:

- Acceptance of her actions during the disciplinary process and in communications with the NMC
- Exceptional pressure on nursing homes during the COVID-19 pandemic
- Remorse and some insight

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 taking no action would neither protect the public nor be in the public interest.

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 Miss Steer'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 Miss Steer'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 placing conditions of practice on Miss Steer'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 took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining.*

However, 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 misconduct identified in this case is not something that can be addressed through retraining as Miss Steer's nursing capabilities are not a concern, rather the panel is of the view that it was an attitudinal issue that related to the culture Miss Steer encouraged by normalising drinking at work with colleagues.

Furthermore, the panel concluded that the placing of conditions on Miss Steer's 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:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The panel determined that Miss Steer had recognised that her actions were wrong as she ceased the practise of drinking on shift with her colleagues six weeks before the referral

with no further incidents or complaints. The panel also considered the stresses that occurred during COVID-19 but were of the view this did not justify Miss Steer's actions.

Nevertheless, the panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel went on to seriously consider whether a striking-off order would be appropriate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate at this stage of the proceedings. The panel also recognised that it is important to support nursing staff back into practice and allow time to remediate.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction to mark the seriousness. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order at this stage.

The panel noted the hardship such an order will inevitably cause Miss Steer. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making this decision, the panel carefully considered the submissions of the NMC in relation to the sanction that the NMC was seeking in this case. However, the panel considered that imposing a 12 month suspension, will allow Miss Steer time to reflect and use the time to strengthen her practice by understanding how to professionally conduct herself.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Miss Steer's attendance and engagement at a future hearing
- Evidence of Miss Steer's current employment status
- Testimonials from colleagues from paid or unpaid work
- Reflective piece detailing the context of Miss Steer's working environment at the time of the incidents, her insight and the potential impact of her behaviour on colleagues and the nursing profession
- Training undertaken to strengthen her practice such as professional conduct and leadership.

This will be confirmed to Miss Steer in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Steer's own interests until the suspension sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The NMC submitted that an interim suspension order is appropriate to cover the appeal period, on the grounds of public protection and public interest.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.