

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

**Substantive Order Review Meeting
Monday, 27 January 2025**

Virtual Meeting

Name of Registrant: Lisa Kavanagh

NMC PIN: 14A1443E

Part(s) of the register: Registered Nurse – Mental Health
Level 1 – 19 March 2014

Relevant Location: Bexhill-on-Sea

Type of case: Misconduct

Panel members: Elliot Kenton (Chair, Lay member)
Helen Chrystal (Registrant member)
Keith Murray (Lay member)

Legal Assessor: Jayne Wheat

Hearings Coordinator: Amira Ahmed

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect at the end of 12 March 2025 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Kavanagh's registered email address by secure email on 20 December 2024.

The panel took into account that the Notice of Meeting provided details that the review meeting would be held no sooner than 27 January 2025 and invited Mrs Kavanagh to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Kavanagh 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).

Decision and reasons on review of the current order

The panel decided to impose a suspension for a period of 12 months. This order will come into effect at the end of 12 March 2025 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (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 on 12 February 2024.

The current order is due to expire at the end of 12 March 2025.

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

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

'That you, a registered nurse whilst working at [PRIVATE]

On 15 April 2022 after Resident A's Omnipod Dash Insulin Pump had stopped working;

- 1) Did not check Resident A's blood glucose levels.*
- 2) Did not call the out of hours GP service to escalate that Resident A required an insulin emergency insulin pen/prescription.*
- 3) Did not escalate that Resident A required emergency insulin to senior members of staff/the Home Manager*
- 4) Incorrectly dispensed/drew up 700 units of insulin instead of 7 units in a non-insulin syringe for Resident A.*
- 5) Inaccurately recorded the incident in Resident A's medical records under Colleague Z's name.*
- 6) Inaccurately recorded that that Resident A drew 700 units of insulin in the syringe.*

On 2 May 2022;

- 7) During you shift incorrectly threw away/misplaced 4 Longtec tablet.*
- 8) Did not conduct a controlled drug medication check with Colleague Y before handing over to the night shift.*
- 9) Did not follow the destroyed medication procedure in that you did not;*
 - a) Ask a second nurse/clinical lead/manager to see the destroyed medication.*
 - b) Did not place the destroyed medication into the 'Doom Box'*

c) Did not write that the medication had been destroyed on the back of Resident A's MAR Chart.

d) Did not request a replacement prescription for destroyed medication from the GP.

e) Did not record an entry into the 'Destroyed Medication Book'

10) Inaccurately informed Colleague Y that you had;

a) Crushed the tablets with a medication trolley.

b) Trod on the medication.

11) Inaccurately recorded in the Controlled Drug Book that you had;

a) Accidentally dropped 4 tablets.

b) Trod on them.

12) Asked Colleague X to inaccurately countersign your entry that the medication was dropped/trod on in the Controlled Drug Book.

13) Your actions in one or more of charge 10) a), 10) b), 11) a), 11) b) & 12) above were dishonest in that you;

a) Sought to conceal that you had failed to dispose of controlled drugs properly and/or;

b) Sought to conceal that you had lost/misplaced controlled drugs.

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

The substantive hearing panel determined the following with regard to impairment:

'The panel finds that Resident A was put at risk of physical harm as a result of Mrs Kavanagh's misconduct. Mrs Kavanagh's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty serious.

Regarding insight, the panel noted that Mrs Kavanagh has not demonstrated an understanding of how her actions put Resident A at a risk of harm. Mrs Kavanagh has not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted that within the registrant response bundle, Mrs Kavanagh briefly reflected on the incident and described Resident A as being bossy and seeming competent in administering his own insulin. Regarding the dishonesty found, there was no evidence before the panel that Mrs Kavanagh had addressed her dishonesty and how she implicated other colleagues in her actions.

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 Mrs Kavanagh has taken steps to strengthen her practice. The panel noted since these concerns arose, Mrs Kavanagh has not had the opportunity to strengthen her practice or check her knowledge and it did not have any evidence of further training she may have since undergone. It further noted that in the emails sent to the NMC, Mrs Kavanagh has maintained that the first allegation is completely false.

The panel did not have anything before it to demonstrate that Mrs Kavanagh has improved or reflected upon her dishonesty. It noted that there were contextual issues and dishonesty is genuinely more difficult to remediate, however the other failings are capable of being remedied but there is no evidence of this before the panel. The panel is therefore of the

view that there is a risk of repetition given that the concerns have not been addressed.

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 determined that a finding of impairment on public interest grounds is required because an informed member of the public would be shocked if given the circumstances, a finding of impairment was not made.

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

The substantive hearing reviewing panel determined the following with regard to sanction:

'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 Mrs Kavanagh'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 Kavanagh’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 Mrs Kavanagh’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;*
- Identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*

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. Although the misconduct identified in this case could be addressed through retraining, Mrs Kavanagh has not been engaging with the proceedings and there is no evidence before the panel that she is practising anywhere at the moment.

Furthermore, the panel concluded that the placing of conditions on Mrs Kavanagh’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:

- *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;*
- *[PRIVATE]*

The panel was satisfied that in this case, although the misconduct was serious, it was not fundamentally incompatible with remaining on the register.

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 Kavanagh's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Kavanagh. 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 Ms Girven in relation to the sanction that the NMC was seeking in this case. However, the panel considered that there is no evidence of deep-seated attitudinal problems. There was no personal gain, and it was a single incident of dishonesty. The panel considered that a striking-off order would be disproportionate at this stage. The panel determined that if Mrs

Kavanagh engaged with the proceedings, the conduct could potentially be remediated.

The panel determined that a suspension order for a period of one year 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:

- *A detailed reflective statement*
- *[PRIVATE]*
- *Further training such as duty of candour*
- *Testimonials from any current employer or unpaid voluntary work*
- *Attendance at future hearings'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Kavanagh's fitness to practise remains impaired. There is no statutory definition of fitness to practise. The panel however took account of the NMC guidance on impairment (DMA-1, 27 February 2024), which suggests the question the panel should ask itself is:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

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 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 Kavanagh's fitness to practise remains impaired.

The panel noted that Mrs Kavanagh has not provided any evidence of strengthening her practice and has not engaged with any of the recommendations made by the substantive hearing panel. The panel also noted that Mrs Kavanagh has not engaged with the NMC since the substantive hearing last year.

The substantive hearing panel determined that Mrs Kavanagh was liable to repeat the matters found. Today's panel had no information before it to suggest a material change in the circumstances. In light of this, it determined, in the absence of any evidence of strengthening of practice, there remains a risk of repetition of the matters 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 Mrs Kavanagh's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Kavanagh'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 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 Mrs Kavanagh'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 Kavanagh'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 on Mrs Kavanagh'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 the seriousness of the facts found proved at the substantive hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel noted that due to Mrs Kavanagh's lack of engagement with the NMC a conditions of practice order would not currently be appropriate or workable.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Kavanagh further time to fully reflect on her previous dishonesty and failings. It considered that Mrs Kavanagh needs to gain a full understanding of how her misconduct can impact upon the nursing profession as a whole.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months would provide Mrs Kavanagh with an opportunity to engage with the NMC and provide evidence

of strengthening of practice. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 12 March 2025 in accordance with Article 30(1).

Before 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:

- Mrs Kavanagh's engagement with the next review.
- A detailed reflective statement
- Testimonials from any current employer or any other work undertaken.
- Evidence of further training or strengthening of practice.

This will be confirmed to Mrs Kavanagh in writing.

That concludes this determination.