Table of Contents

Health condition: Where an employer can manage concerns locally while investigating

Last Updated: 02/02/2021

In this guide

Background

Midwife A has been employed by their current employer for the past three years and doesn't work anywhere else.

Recently, Midwife A's colleagues raised concerns that Midwife A is alcohol dependent, although there's no suggestion that Midwife A cared for patients while intoxicated.

The employer met with Midwife A to discuss the concerns. Midwife A initially denied there was anything wrong and went off sick shortly afterwards.

In a follow up meeting, Midwife A provided details of ongoing support through the GP and a local treatment service for alcohol dependence. However, last week, Midwife A attended a review meeting with the employer, visibly under the influence of alcohol. When asked whether they had been drinking, Midwife A walked out of the meeting.

Midwife A later apologised and said they had been making progress with treatment but bad news on the day of the meeting had prompted the relapse. Midwife A said this was a one-off. They recognised the impact the health condition could have on their ability to provide safe care for women, families and babies. They remained committed to ongoing treatment and support, including support from the employer.

What the employer did

Midwife A's employer took a number of steps in response to the concerns.

- They took statements from everyone who was present to capture their direct accounts of Midwife A's behaviour during the review meeting.
- They considered the extent of the concerns about Midwife A's alcohol dependence, including whether workplace stress, personal issues or other health issues were a factor.
- They referred Midwife A to the Occupational Health Team and developed an action plan with proposals for treatment and support. The plan aimed to address Midwife A's alcohol dependence and other factors that may be contributing to this.
- They arranged further review meetings with Midwife A to continue to assess:
  - Midwife A's insight into how much their condition might impact their ability to practise safely and effectively
  - their willingness to continue to engage with the necessary treatment and support
  - their overall progress and the possibility of them returning to work, with any adjustments they need.

What happened next

The employer made an immediate referral to us.

We decided the employer was able to continue to manage any ongoing risks to patient safety while supporting Midwife A to manage their health condition. Therefore, we closed the case at the screening stage.

What should the employer have considered?

1. What's the risk?

We won't normally need to intervene in a nurse, midwife or nursing associate's practice due to ill health unless there is a risk of harm to people who use services or a related risk to public confidence in the profession.

In this particular case, although it appears that Midwife A has experienced a relapse of a health condition, there isn't a current risk to public safety as Midwife A:

- hasn't attempted to care for anyone while under the influence of alcohol
- isn't currently practising in a clinical setting
- doesn't work for any other employer
- is engaging with the current employer and necessary treatment services
- has taken time off sick, suggesting Midwife A is aware of not being currently in a position to work

The facts of this case suggest that the risk of any future harm is low.

2. Can you effectively manage any risk to people who use services?

Although the risk to people who use services is low, as an employer you would still need to ask yourself what you can do to manage the risk and support Midwife A to ensure safe practice in future.

In our FtP guidance on health we state:

> "A nurse, midwife or nursing associate may have a disability or long-term health condition but be able to practise with or without adjustments to support their practice. Equally, they may be signed off as 'unfit for work' due to ill health, but this does not necessarily mean their fitness to practise is currently impaired."

In this case, the employer was effectively managing the risk to public safety by providing support to Midwife A.

This included referring them to the Occupational Health Team, exploring any contextual factors that might be impacting on Midwife A's health, ongoing support of sickness absence and regular review meetings.

As Midwife A only worked for this employer and was engaging with them in an open and transparent way, (albeit despite an initial reluctance), all of these measures were sufficient to keep people who use services safe.

Our guidance on health conditions states that a relapse of a health condition that appears to be well managed could affect Midwife A's ability to practise safely. It may require regulatory action to ensure there is no risk of harm to patients and others.

But in general, we say that cases of ill-health are likely to be better managed with the support of the employer.

When Midwife A attended the review meeting under the influence of alcohol, the employer took the view that Midwife A's relapse meant they should now make a referral to us. But despite this relapse, the employer was likely to be able to effectively manage the concerns, particularly because Midwife A:

- demonstrated into the extent and effect of the condition and the reasons for the recent relapse
- was appropriate treatment and professional advice

- was to receive support through Occupational Health and
- took to ensure people who use services wouldn't be put at risk.

These factors, particularly Midwife A's willingness to engage with the employer and appropriate treatment services, all suggest that any safety risks could continue to be effectively managed by the employer at this time.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Midwife A has acknowledged an ongoing health condition and has been open about this, albeit at a late stage.

Although there was a brief relapse, Midwife A has acknowledged this and has repeated a willingness to both seek and accept support from the employer and treatment services.

By taking time off work to address the health condition, Midwife A is also ensuring that no members of the public are put at risk of harm.

The information available suggests that Midwife A is both capable and willing to address the health condition at this time, with support from the employer.

2. Verbal abuse of patient – employer can manage the concerns locally while investigating

Last Updated: 02/02/2021

In this guide

Background

Nursing Associate A has been employed by their current employer since February 2019. No one has raised any concerns about their practice during that time until now. They don't work for any other employer.

Recently, a healthcare assistant reported to the employer that they'd seen Nursing Associate A verbally abuse a patient. The healthcare assistant said the patient told Nursing Associate A they had a headache and asked for some paracetamol. According to the healthcare assistant, Nursing Associate A appeared annoyed by the request, turned to the patient and shouted at them to "shut up and stop moaning".

The healthcare assistant said the patient was visibly upset and didn't ask again. They didn't feel this was appropriate and felt the need to speak up about the ill treatment of the patient.

What the employer did

In response to the concerns, Nursing Associate A's employer took the following steps.

- They met with the healthcare assistant and thanked them for raising this concern through the appropriate channels. The employer took a full statement from the healthcare assistant and reassured them that the concern would be taken seriously
- They met with Nursing Associate A who denied the allegations and was both distraught and visibly upset at the suggestion that they'd ever speak to a patient in this way.
- Based on their internal procedures, they decided it was necessary to conduct an investigation into the concern.
- They met again with Nursing Associate A to explain they'd be investigating the matter and would take statements from Nursing Associate A, relevant colleagues and the patient, if possible. They discussed the safeguarding referral process and the duty of candour obligations.
- They arranged for Nursing Associate A to have weekly meetings with their line manager for updates and emotional support throughout the process.
- They redeployed Nursing Associate A in a non-patient facing role pending the outcome of the investigation.
- They made a referral to the local safeguarding team who would also be investigating.

What happened next

The employer in this case made an immediate referral to us before completing their local investigation.

When the employer's investigation concluded, they found that the allegation was true but this was an isolated incident and not a deliberate pattern of poor behaviour.

The employer was satisfied that Nursing Associate A was genuinely remorseful and was able to reflect on why the

incident had happened and what they'd do to avoid repetition in future. They spoke with the patient and family who were satisfied with the apology and commitment to this not being repeated. The employer re-instated Nursing Associate A to full clinical duties.

We closed the case at the screening stage as we decided the employer was able to effectively manage any risks to patient safety at a local level.

What should the employer have considered?

1. What's the risk?

Our approach to fitness to practise says:

> "Employers should act first to deal with concerns about a nurse, [nursing associate] or midwife's practice, unless the risk to patients or the public is so serious that we need to take immediate action."

If the allegation is true, this would have been very upsetting for the patient. There is a risk that the patient may be reluctant or frightened to ask staff for help in future. The alleged behaviour is inappropriate and if true, Nursing Associate A will have breached the Code and standards.

They would have failed to treat the patient with kindness and compassion and failed to deliver appropriate care.

However, it's important to take a proportionate approach to the concern and to consider:

- this is an isolated incident as far as we know
- no other concerns have been raised about Nursing Associate A's practice to date.

The facts of this case suggest that the risk of any future harm is low.

2. Can you effectively manage the risk to ensure patient safety?

If nurses, midwives or nursing associates fall short of the Code, what they did or failed to do may be serious professional misconduct which we might need to investigate.

However, fitness to practise is about keeping people safe, rather than punishing our professionals for past mistakes. Isolated incidents won't usually amount to serious professional misconduct and can usually be managed by the employer.

The full investigation should establish whether:

- the allegation is true
- this is a pattern of behaviour, not just an isolated incident
- whether there are any particular contextual factors, either in the workplace or Nursing Associate A's private life, which may have contributed to this behaviour/incident.

In the meantime, the employer has taken suitable steps to manage the concerns and to ensure patient safety by:

- making the necessary safeguarding referral
- engaging with Nursing Associate A in a transparent way
- removing Nursing Associate A from clinical duties
- being satisfied that Nursing Associate A doesn't have another employer or work in another setting.

The facts here indicate that the employer can effectively manage any immediate risks to patient safety. The outcome of the investigation would have determined whether the risks could effectively be managed going forward and whether a referral was needed.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Nursing Associate A's initial denial of the allegation does not automatically mean that they lack insight. Initially,

this is just an allegation that has yet to be investigated, so the individual may be telling the truth when denying any wrongdoing.

In this situation, Nursing Associate A's initial reaction, being visibly upset by the suggestion that they could have spoken to a patient as alleged, may suggest they have insight into the concerns regarding ill-treatment of a patient.

However, the full extent of any insight and willingness to put things right can only be assessed once the investigation concludes that Nursing Associate A behaved as alleged.

3. Alleged theft of medication – employer can manage the concerns locally while investigating

Last Updated: 02/02/2021

In this guide

Background

Nurse A has been employed by their current employer for nine years. Throughout that time, there haven't been any concerns about the nurse's clinical practice or conduct.

However, three of Nurse A's colleagues have recently reported that they suspect Nurse A stole a pack of fentanyl tablets from the ward. They allege that at the end of the shift, Nurse A was behaving strangely. They said they were all talking in the staff room but Nurse A turned away, and they saw Nurse A take the pack of medication out of their pocket and 'slip it' into their bag.

Over the past month the employer has had concerns that some medication has been going missing. A quick audit of medication showed that there was some fentanyl missing from the ward where Nurse A was allegedly seen with it.

Nurse A's manager has also reported that Nurse A hasn't been their 'normal self' over the past few weeks, coming in slightly late for shifts and leaving slightly early.

What the employer did

In response the concerns, Nurse A's employer took a number of steps.

- They undertook preliminary enquiries, including discussions with the three members of staff to clarify the details of what they saw.
- They spoke with Nurse A, who denied stealing medication. Nurse A said, over the past few weeks, they'd been visiting a sick friend before their shift and discovered that the friend had been prescribed fentanyl tablets but was taking too many. Concerned for the friend's welfare, Nurse A said they took the tablets away with the intention of returning them after work.
- Based on their internal procedures, they decided a more detailed investigation was required to consider the recent medication discrepancies and also the allegations against Nurse A.
- They met with Nurse A to confirm an investigation would be carried out by someone from another ward. They explained that a clear timescale would be set and terms of reference agreed, including interviews with relevant witnesses
- They provided Nurse A with regular progress updates and support through Occupational Health.

What happened next

The employer in this case made an immediate referral to the NMC before completing their local investigation.

At the point of making the referral, the employer didn't have evidence that Nurse A had stolen any medication so there was no need for us to take immediate action to restrict Nurse A's practice. The employer was suitably

managing the concerns, so the referral was put on hold until the conclusion of their investigation.

The employer later confirmed that they had carried out a thorough investigation which found that Nurse A's account was true, and the concerns weren't upheld.

We closed the case at the screening stage as there weren't any concerns for us to consider.

What should the employer have considered?

1. What's the risk?

The allegation of medication theft and dishonesty is very serious and calls into question Nurse A's integrity, professionalism and trustworthiness. If found to be true, this is a serious concern that would be difficult to put right.

The employer would also need to consider whether Nurse A stole the medication for their own use, indicating an underlying health condition. This could give rise to an additional concern about patient safety.

However, until the employer's investigation has concluded, there's no suggestion Nurse A poses any current risk of harm to patients or the public.

2. Can you effectively manage the risk to ensure patient safety?

Our approach to fitness to practise says:

> "Employers should act first to deal with concerns about a nurse, [nursing associate] or midwife's practice, unless the risk to patients or the public is so serious that we need to take immediate action."

Based on the facts of this case, there are no clinical concerns regarding Nurse A's practice, and no suggestion that actions have in any way put patients at risk of harm.

Our approach to fitness to practise also says:

> "In cases that aren't about clinical practice, taking action to maintain public confidence and uphold standards is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a registrant as a professional".

The allegation of dishonesty, if proven through the employer's investigation, may require the NMC to take action to promote public trust and confidence in the profession.

However, this concern is not so serious that we need to take immediate restrictive regulatory action. There's no suggestion that there are any wider concerns in relation to Nurse A's practice and Nurse A is not working elsewhere.

At this stage any risk is being effectively managed by the employer with the cooperation of Nurse A during the local investigation.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Nurse A engaged well with the employer throughout.

It's important that employers approach investigations in a fair and objective manner. Nurse A's initial denial of the allegations shouldn't be taken to be a lack of insight, particularly as there was no credible evidence to suggest that the allegations were substantiated.

4. Alleged unprofessional behaviour: concerns being suitably managed locally

Last Updated: 02/02/2021

In this guide

Background

Nurse A has been employed by their current employer for the past 24 months with no concerns about their clinical practice.

About eight months ago, the employer gave Nurse A an informal warning due to a combination of concerns, including frequent lateness when coming onto shifts, leaving shifts a few minutes early on several occasions and using a work computer for personal administration during work time.

Six months ago, a colleague raised a further concern that Nurse A had made a discriminatory comment towards another colleague. The colleague reported that a nurse who joined the register from overseas was completing a shift handover, during which they apologised for the poor quality of the handover note, due to the shift having been hectic and short staffed.

It was alleged that Nurse A responded in an unpleasant tone by saying, “don’t worry, we know you struggle to write English so we forgive you”.

What the employer did

In response to the concerns, Nurse A’s employer took the following steps.

- They met with the colleague who reported the concern and reassured them that it would be taken seriously.
- In accordance with their local procedures, they decided they should formally investigate the concerns. They spoke with Nurse A to explain the investigation process and what this entailed. The employer explained that although Nurse A had received an informal warning previously for unrelated behaviour, they would be looking at this new allegation without bias and would make sure that Nurse A was kept up to date with the progress of the investigation and next steps.
- They carried out a detailed and thorough investigation to ensure that: there weren’t any further incidents that hadn’t been reported; this behaviour wasn’t indicative of a pattern of bullying or harassment; Nurse A hadn’t behaved inappropriately towards patients at any time. The concerns about Nurse A’s behaviour towards her colleague were substantiated with no wider issues identified.
- They held a disciplinary hearing which found Nurse A’s behaviour fell seriously below the conduct that they would expect of their employees, and had acted in breach of the organisation’s policies. Nurse A maintained there was no mal-intent in what had been said, it was a joke that had been misconstrued.
- They gave a final written warning and put in place a detailed action plan, including equality and diversity training.

What happened next

The employer in this case made a referral to us following the disciplinary hearing.

We closed the case at the screening stage. The concerns weren't serious enough to raise fundamental concerns about Nurse A's trustworthiness as a registered professional, so we didn't need to take restrictive regulatory action.

If the employer had contacted our Employer Link Service, we would have been able to provide advice so Nurse A wouldn't have been unnecessarily referred.

What should the employer have considered?

1. What's the risk?

Nurse A's behaviours, which previously amounted to an informal warning, aren't matters which would involve us as they don't put patients at risk of harm and don't raise fundamental concerns regarding Nurse A's trustworthiness as a registered professional.

Nurse A's most recent conduct towards their colleague amounts to a breach of the Code and standards. We don't condone behaviour which is derogatory or unprofessional and may seek to take action if there was a concern that Nurse A's actions amounted to bullying or harassment. However, following the employer's full investigation, there's no suggestion that this is the case here.

The facts of this case don't suggest any risk to patient safety. The risk here relates to Nurse A's behaviour and whether it's serious enough to put the reputation of the profession at risk (see further below).

2. Can you effectively manage the risk to ensure patient safety?

There is no risk to patient safety in this case. Through the local investigation, the employer is satisfied that there are no wider concerns regarding Nurse A's behaviour towards colleagues or patients. On the facts of this case, this isolated incident would not amount to serious professional misconduct from a regulatory point of view.

Our approach to fitness to practise says:

> "In cases that aren't about clinical practice, taking action to maintain public confidence and uphold standards is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a registrant as a professional."

This is a high threshold which suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment by nurses, midwives and nursing associates.
Nurse A's conduct in this case is not sufficiently serious to call into question their fundamental trustworthiness as a professional.

The employer has taken suitable steps to manage the concerns in relation to Nurse A's behaviour. They did this by fully investigating the matter to make sure this isn't a pattern of behaviour, giving a formal warning and giving Nurse A the chance to engage in a detailed action plan to avoid repeating this behaviour in future.

The information suggests that Nurse A has fully engaged with the employer to date and therefore the employer's action is suitable to effectively manage the concerns at a local level.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Nurse A engaged with the employer's investigation and disciplinary action throughout which suggests they have insight into the concerns and are willing to work with the employer's action plan to show that they will put things right.

Nurse A may not have fully admitted that they were wrong, and they may be appearing to 'excuse' their behaviour by saying it was a joke.

However, the final written warning, together with the action plan will be an opportunity for Nurse A to demonstrate that they have reflected and understood their actions were inappropriate. This is also an opportunity for Nurse A to show they will not repeat this behaviour and will behave both professionally and appropriately towards colleagues in future.

5. Concerns about clinical competence – local investigation should conclude before referral

Last Updated: 02/02/2021

In this guide

Background

Nurse A has been employed by the current employer for the past two years. During that time there have been ongoing concerns about their ability to administer medication safely.

On three separate occasions last year, Nurse A either administered or prepared to administer medication via the wrong route. Nurse A also administered intravenous medication without properly carrying out the necessary second checks.

When the concerns were identified, Nurse A recognised the risk to patients and was willing to do anything necessary to improve their practice. The employer managed the concerns by putting an action plan in place.

Nurse A completed a reflective piece, further training and a period of supervised practice. After making good progress, Nurse A was signed off as competent. But a few months later, the employer discovered that Nurse A had again administered medication via the wrong route, more than once.

What the employer did

In response to the concerns, Nurse A's employer took a number of steps.

- They put in place another, more robust action plan. Two senior nurses separately supervised Nurse A during drug rounds. They both said they had to intervene a few times to stop Nurse A from making mistakes. They also said Nurse A didn't keep proper records and left the drugs trolley unattended. They didn't feel they could sign Nurse A off and had serious concerns about Nurse A's competence.
- They met with Nurse A, who wasn't able to explain why these mistakes kept happening.
- They asked Nurse A to write another reflective piece which didn't really provide reassurance that Nurse A knew what the problem was or how to improve.
- In accordance with their local procedures, they decided to undertake an investigation which looked at whether there were any contextual factors that might have contributed to the issues. Contextual factors might have included staffing shortages, pressures and poor systems. They didn't find anything of concern so the concerns about Nurse A's lack of competency in medicine administration were substantiated.
- They referred Nurse A to Occupational Health, but no concerns were identified.
- They held a full disciplinary hearing which resulted in Nurse A being dismissed due to concerns that despite ongoing support, Nurse A wasn't able to make the necessary improvements to their practice to keep members of the public safe.

What happened next

The employer in this case made a referral to us as soon as they'd concluded the disciplinary process and

dismissed Nurse A. At this point, local management action could no longer effectively manage the ongoing risk to patients.

The employer's referral at the conclusion of its internal process meant that the referral was supported with all of the detailed documentation about the steps taken to support Nurse A, their engagement throughout the process, the impact on patient safety, witness accounts and investigation reports.

With that information, we were quickly able to understand the concerns and to assess the risk that Nurse A might pose to patients if allowed to practice without any restrictions.

We imposed an interim conditions of practice order which meant Nurse A could continue to practice but with clear conditions to ensure patient safety.

What should the employer have considered?

1. What's the risk?

Despite being given support over a two year period, Nurse A hasn't been able to demonstrate appropriate skills and knowledge to correctly and appropriately administer medication without supervision on a long-term basis.

There is a risk that Nurse A lacks competence and isn't capable of safe and effective practice. This was a risk that the employer suitably managed during the course of the improvement plans that were in place to support Nurse A and to give them the opportunity to put things right.

Nurse A has now been dismissed and will no doubt be seeking alternative employment. As Nurse A hasn't successfully completed the last action plan, they are currently not deemed competent to administer medication without support. It doesn't appear that Nurse A fully recognises the limits of their competence or what they might need to do to make the necessary improvements to their practice.

Based on what we know, there is a high risk that Nurse A will make further medication errors if not fully supervised by a future employer. As Nurse A appears to lack insight into the problems, we can't be sure that they will declare these concerns. The overall risk to patient safety is significant.

2. Can you effectively manage the risk to ensure patient safety?

Our approach to fitness to practise says:

> "Employers should act first to deal with concerns about a registrant's fitness to practice, unless the risk to patients or the public is so serious that we need to take immediate action."

The employer in this case took suitable steps to try to manage the concern and to support Nurse A to make improvements to their practice over a long period of time. Recognising patients were put at risk of harm following the initial medication errors, the employer appropriately assessed the risk and put an action plan in place which Nurse A successfully completed. This suggested Nurse A had made the necessary improvements to their practice, with support, and the risk of repetition at that time was low.

When the employer then found the concerns had re-emerged, they took appropriate steps again to provide support to Nurse A while keeping patients safe. This meant that there was no need for a referral at that time. Nurse A wasn't working for another employer and any patient safety risks were being effectively managed through the employer's local management action.

We say that except in the most serious cases, your investigation should be completed before you make a referral to us.

But our approach to fitness to practise also says:

> "we always take regulatory action when there is a risk to patient safety that is not being effective managed

> by an employer.”

When the employer reached the point that no further support could be provided, and took the decision to dismiss Nurse A, it was appropriate for a referral to be made as the employer was then no longer able to effectively manage the concerns.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Nurse A initially demonstrated insight into the concerns and a willingness to put things right. The employer recognised that and rightly took steps to provide support to help bring about improvements.

It initially seemed that had been successful. Unfortunately, despite support, Nurse A wasn’t able to sustain the improvements to their practice.

This was unfortunate as Nurse A appeared to understand the concerns, but wasn’t able to make and sustain essential improvements to ensure patient safety. This meant Nurse A hadn’t been able to put the concerns right, despite having insight and a willingness to do so.

6. Concerns about clinical competence – referral should be made before conclusion of local investigation.

Last Updated: 02/02/2021

In this guide

Background

Midwife A joined the community midwifery team two years ago. The employer gave a lot of support from the start as part of the usual induction process. This included regular supervision, peer support and a number of training courses.

Despite this, Midwife A has struggled to reach a point where they can practise safely and effectively.

The employer recently carried out a review of Midwife A's progress and discovered the following concerns:

- People who used services had been put at risk of harm on a number of occasions as Midwife A failed to consider their records when providing care and treatment.
- In the case of 15 people who used services, bloods hadn't been taken when necessary.
- 35 records of people who used services were found to either be incomplete or inaccurate, with a failure to recognise 3 'high risk' cases.

What the employer did

In response to the concerns, Midwife A's employer:

- held a meeting at which Midwife A was encouraged to speak openly and honestly about their progress and any challenges
- explained they had decided to carry out a local investigation to look into if (a) Midwife A has the necessary competence to fulfil the role, (b) if there are any factors affecting Midwife A's ability to practise effectively, for example, systems or personal difficulties, (c) what, if any more support can be provided
- removed Midwife A from clinical duties pending the outcome of the investigation to ensure the safety of people who use services.

Three weeks later and before the employer could conclude the local investigation, Midwife A resigned with immediate effect saying they weren't intending to continue to practise and were going to consider alternative career options.

What happened next

The employer made an immediate referral to us as soon as Midwife A resigned, and before they finished their internal investigation.

The employer's referral was supported with detailed information from their investigation. This gave us a full

picture of the situation, the employer's efforts to manage the concerns up to the point of Midwife A's resignation and details of Midwife A's insight and engagement throughout.

With that information, we were quickly able to understand the concerns and to assess the risk that Midwife A might pose to people who use services if allowed to practice without any restrictions.

Due to the seriousness of the concerns in this case, and the risk to public safety, we imposed an interim conditions of practice order within 28 days of the referral being received. This ensured patient safety by allowing Midwife A to continue to practise, with supervision, while our investigation was carried out.

What should the employer have considered?

1. What's the risk?

We recognise that nurses, midwives and nursing associates can sometimes make mistakes or errors of judgement. Unless it was serious, a single isolated error wouldn't usually indicate a general lack of competence.

But, in this case, there are a series of concerns about Midwife A's clinical practice and judgement:

- Despite being given support over a lengthy period of time, Midwife A hasn't made the necessary improvements to demonstrate they are capable of safe and effective practice.
- Although there's been no actual patient harm, the errors and omissions were serious enough to put people at risk of harm.
- Midwife A hasn't fully engaged with the employer's support and hasn't successfully demonstrated they can make the necessary improvements to their practice to ensure patient safety.
- Although Midwife A says they are going to consider alternative career options, if they change their mind and choose to practise elsewhere, it's likely the errors will be repeated so the possibility of causing harm to people who use services is high.

2. Can you effectively manage the risk to ensure patient safety?

Our approach to fitness to practise says:

> "Employers should act first to deal with concerns about a registrant's fitness to practice, unless the risk to patients or the public is so serious that we need to take immediate action".

In this case, the concerns about Midwife A's competence didn't need to be referred to us as they were being effectively managed by the employer.

The employer removed Midwife A from clinical duties pending the outcome of the local investigation. As Midwife A didn't work for any other employer, this meant any safety risks to people were being effectively managed while an investigation was done and consideration could be given to what further support Midwife A might need to improve their practice.

We say that except in the most serious cases, your investigation should be completed before you make a referral to us.

But our approach to fitness to practise also says:

> "We always take regulatory action when there is a risk to patient safety that is not being effectively managed by an employer."

If Midwife A hadn't resigned, the employer should have continued to manage the concerns while investigating. But, Midwife A's resignation meant they might choose to work elsewhere.

The risk can't now be managed by the employer, so a referral is necessary at the point Midwife A resigned. However, the employer should complete its investigation as much as possible.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the

concerns right?

By resigning before the investigation was completed, we don't know whether Midwife A had sufficient insight into the concerns and/or if there was a problem they hadn't shared.

The employer's investigation should consider what, if any, steps Midwife A might need to take to put things right – and we'll need to assess the extent to which Midwife A may be willing to take those steps.

7. Concerns about putting patients at risk and falsification of records – immediate referral required

Last Updated: 02/02/2021

In this guide

Background

Nurse A works on a part-time basis for Agency X and has recently been contracted to work a number of shifts in a mental health setting at Hospital Y.

Nurse A was responsible for carrying out hourly observations of patient B. A colleague reported that Nurse A falsified the patient's record to show that hourly observations were carried out when Nurse A was in fact, in the office, playing on the computer.

There wasn't any harm to the patient. However, Hospital Y reported the concerns to the agency and has told the agency that they don't want Nurse A to work for them again.

What the employer did

In response to the concerns, Agency X and Hospital Y took the following actions.

- Hospital Y shared information with Agency X about the incident. Both organisations committed to work closely together so that the issues could be investigated.
- Hospital Y agreed to take the lead in the investigation and engagement with Patient B's family in line with the professional duty of candour. Agency X contacted Nurse A to offer support and to encourage Nurse A to engage with the investigation.
- Agency X carried out detailed checks of their files to see if there were any previous concerns raised about Nurse A's practice from different placements and other agencies with whom Nurse A might have been registered.
- Hospital Y and Agency X shared information and updates as the investigation progressed to ensure they were both aware of the issues and risks.
- Hospital Y took witness statements from the member of staff who reported the concern as well as others on shift that day. CCTV had also been reviewed. Nurse A was seen going into the office at 01:00 and not coming out until 04:30. Nurse A had signed the patient's record to show hourly observations during this time.
- Agency X tried to contact Nurse A several times but their calls and emails weren't returned.
- Hospital Y and Agency X agreed that a regulatory referral was needed due to the seriousness of the concerns and the lack of engagement from Nurse A. Agency X agreed to lead on making the referral immediately. They gave Hospital Y as a point of contact when making the referral so we could also engage with them immediately to avoid any delay in progressing our enquiries.

What happened next

There's a serious concern that Nurse A deliberately put patients at risk of harm and acted dishonestly in so doing. The agency wasn't able to manage the patient safety risk in this case. It was appropriate that the matter should be referred to us so that we could engage with Nurse A and make enquiries to assess the extent to which Nurse A posed a future risk of harm to people who use services.

What should the employer have considered?

1. What's the risk?

Nurse A put someone at direct risk of harm by failing to carry out observations as required and by falsely signing the patient record to suggest they had been observed and was alright. This is a serious concern that's difficult to put right as it calls into question the trustworthiness of Nurse A as a professional.

Nurse A has acted dishonestly and without integrity, which raises a public protection concern. The agency may take steps to suspend Nurse A. However, we know that nurse A only worked part-time for the agency, so it's possible they may work through other agencies. Based on what we know, there's a risk of future harm to people who use services if this behaviour is repeated.

2. Can you effectively manage the risk to patient safety

Our approach to fitness to practise says:

> "Employers should act first to deal with concerns about a registrant's practice, unless the risk to patients or the public is so serious that we need to take immediate action".

We also state:

> "Some regulatory concerns, particularly if they raise fundamental concerns about the registrant's professionalism, can't be addressed and require restrictive regulatory action".

A small number of concerns are so serious that it may be less easy for a nurse, midwife or nursing associate to put right their conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening. This includes situations where there's dishonesty directly linked to the nurse, midwife or nursing associate's clinical practice.

In this case, the concerns raised questions regarding Nurse A's trustworthiness as a professional. This isn't something Agency X can effectively manage.

In such cases, it's important the organisation in which the concerns arise and the agency, take suitable steps to investigate the concern and to work together to ensure there's sufficient evidence available at the point of referral so we deal with the concern swiftly ensuring the safety of people who use services.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Even if Nurse A provides an explanation for their actions, this is a serious concern that's more difficult to put right. We'll want a lot more information, including whether the individual has worked elsewhere and we'll need to make enquiries to find out if this was an isolated incident or whether there are wider concerns.

8. Concerns about physical abuse of patient – immediate referral required

Last Updated: 02/02/2021

In this guide

Background

Nurse A is a senior nurse who has been working at organisation B for a number of years. There are no previous concerns in relation to Nurse A's conduct or practice. However, there's a recent allegation that Nurse A physically assaulted a patient.

A healthcare assistant says they saw a heated exchange of words between Nurse A and a patient. The patient then began to walk away from Nurse A but it's alleged Nurse A followed the patient and said something to them before grabbing the patient's shirt, forcefully turning the patient towards them.

Nurse A then allegedly put their hands around the patient's throat, forcing them backwards and pinned them against the wall. The healthcare assistant said they couldn't hear what was said but reported that Nurse A looked 'out of control'.

The patient has visible marks around their neck which are consistent with them being pinned against the wall by the neck. Nurse A's incident report makes no mention of an altercation.

What the employer did

In response to the concerns, Nurse A's employer took a number of steps.

- They spoke with the patient and exercised the duty of candour. The patient was in a position to give a full witness statement which outlined the account in exactly the same way as the healthcare assistant had reported.
- They made a referral to the Local Authority Safeguarding Team and the Police are currently investigating.
- They reviewed the CCTV footage showing that the healthcare assistant's account is accurate – the patient was walking away from Nurse A who suddenly initiated the assault for no apparent reason.
- They held a meeting with Nurse A who has denied the allegations. The employer explained the need to start a formal investigation in accordance with their local procedures, during which, Nurse A was removed from clinical duties in order to ensure their safety and that of people who use services.

What happened next

The employer made an immediate referral to us before concluding the local investigation.

The employer's referral was supported by all evidence that was available. Although the employer couldn't provide the CCTV footage, they did provide witness statements from all who reviewed it, setting out what they saw. We also spoke to the police and they confirmed they've charged the registrant with assault of the patient.

This enabled us to impose an Interim Suspension Order within 28 days of the referral being received which ensured the safety of people who use services by preventing Nurse A from practising until we're able to further look into the concerns.

What should the employer have considered?

1. What's the risk?

Although the allegations haven't yet been fully investigated, there's CCTV evidence together with direct witness evidence that Nurse A deliberately assaulted a patient.

In many cases, an isolated incident of poor behaviour may not need a regulatory referral. However, in this case, the behaviour suggests serious professional misconduct, which is going to be difficult for Nurse A to put right.

This was made worse by Nurse A's failure to accept the concerns and hasn't complied with the professional duty of candour. The employer's investigation will need to consider any other issues which may have led to the nurse's behaviour on this occasion.

There's a significant risk to people who use services and a need to promote public trust and confidence in the professions, requiring immediate referral in this case.

2. Can you effectively manage the risk to ensure patient safety?

In this case, the employer has taken suitable steps to manage any immediate risk to people who use services by removing Nurse A from clinical duties pending a full investigation. There's no suggestion that Nurse A is working elsewhere.

However, the concern is that Nurse A has caused deliberate harm to a patient which they've failed to accept. Nurse A has also been charged with a criminal offence.

Public confidence might be undermined if Nurse A wasn't restricted from practising while this case is investigated.

As a general guideline, an employer should make a referral to us if the concern is so serious the individual presents an immediate risk to people who use services or the public that would be difficult to put right. This allows us to consider if we should restrict or suspend practise while investigations take place.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

The current information available suggests that Nurse A has denied any wrongdoing, despite being made aware of the evidence that's available. This shows a significant lack of insight.

Even if Nurse A had accepted that what they did was wrong, the concerns are so serious it's going to be difficult to put right. It's necessary for a referral to be made to us so we can consider the most appropriate action to ensure the safety of people who use services and to promote public trust and confidence in the profession.