

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

**Substantive Order Review Meeting
9 March 2021**

Virtual Hearing

Name of registrant: Jackalyn Thomson

NMC PIN: 75A1430E

Parts of the register: Registered Nurse
Adult Nursing – November 1979
Midwifery – February 1982

Area of registered address: Scarborough

Type of case: Misconduct

Panel members: Richardo Childs (Chair, Lay member)
Tanya Tordoff (Registrant member)
Jane McLeod (Lay member)

Legal Assessor: David Marshall

Panel Secretary: Roshani Wanigasinghe

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Striking off order to come into immediate effect in accordance with Article 30 (2) of the 'Nursing and Midwifery Order 2001' (the Order)

Decision and reasons on service of Notice of Meeting

The panel considered whether notice of this meeting has been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”).

The panel noted that notice of this meeting was sent to Mrs Thomson on 28 January 2021 to her email address on the register. The notice of meeting stated that Mrs Thomson’s case would be considered at a meeting no sooner than 8 March 2021.

The panel accepted the advice of the legal assessor.

The panel noted that under the Rules, notice of a meeting can be sent by electronic mail to an electronic mail address that the registrant has notified to the Council as an address for communications.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed as well as providing a time frame for the review.

In the light of all of the information available, the panel was satisfied that Mrs Thomson has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Rules, as amended.

Decision and reasons on review of the substantive order

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

This order will come into effect immediately in accordance with Article 30(2) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the second review of a substantive suspension order, originally imposed by a Fitness to Practise panel on 27 September 2019 for a period of 6 months. On 9 March 2020, a reviewing panel imposed a further suspension order for a period of 12 months.

The current order is due to expire at the end of 28 April 2021.

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

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

“That you a registered midwife:

1) Administered Botox on or around 11 January 2018 to Patient 1, without a valid prescription.

2) On one or more occasion on unknown dates in 2017 administered Botox to Patient 2, without a valid prescription.

3) On an unknown date in 2017 administered Botox to Patient 3, without a valid prescription.

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

The original panel determined the following with regard to impairment:

The panel first considered whether Mrs Thomson’s fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

The panel had regard to all the evidence it had before it. It accepted the advice of the legal assessor.

The panel exercised its own independent judgment in deciding the issues before it, bearing in mind that there was no burden or standard of proof at this stage. It bore in mind the guidelines outlined in the case of CHRE v Nursing and Midwifery

Council and Grant, [2011] EWHC 927 (Admin) and found the first three limbs engaged namely.

- 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;*

The panel had sight of the photographs of Patient 1 and the harm caused to her by Mrs Thomson's actions. It noted that although no actual harm was caused to Patient 2 and Patient 3, Mrs Thomson's actions placed them at risk of harm. It was of the view that Mrs Thomson's administration of Botox without a valid prescription to three separate patients brought the profession into disrepute and breached a fundamental tenet of nursing.

Regarding Mrs Thomson's insight, the panel took into account that she has made early admissions to the charges. It noted that Mrs Thomson had expressed regret for her actions in an email dated 19 August 2019 to the NMC case officer in response to her rejected voluntary removal application. The email stated:

'...I am unsure as to what else I can do to express my regret and understanding of the case before me '.

However, the panel was of the view that Mrs Thomson had expressed extremely limited insight into her failings. It determined that Mrs Thomson did not properly acknowledge the risk of harm she caused all three patients, the actual harm caused to Patient 1 or the effect her misconduct could have had on confidence in the profession in general. It also noted that Mrs Thomson did not apologise for the actual harm she caused to Patient 1.

The panel considered that the misconduct in this case was remediable but had not been remedied. It noted that Mrs Thomson is no longer a practising as a nurse or

midwife and had previously applied to be removed from the register. However, were she to return to practise in light of the extremely limited insight and the lack of evidence of remediation, the panel has not been sufficiently persuaded that Mrs Thomson is unlikely to repeat her misconduct.

The panel is therefore of the view that there is a risk of repetition. It determined that Mrs Thomson's fitness to practise is impaired on the ground of public protection.

The panel bore in mind that the overarching objectives of the NMC are 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, which 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 public confidence in the profession would be undermined if a finding of impairment were not made in circumstances where a midwife administered Botox to three separate patients without obtaining a prescription as was required. The panel therefore concluded that a finding of impairment was necessary on the grounds of public interest.

Having regard to all of the above, the panel decided that Mrs Thomson's fitness to practise is currently impaired.

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

The panel has had regard to all of the documentation before it including an email from Mrs Thomson dated 4 February 2020 which stated:

'... as previously stated I have no wish , intention or desire to re engage in any form of nursing or midwifery , I understand the process of the NMC and await further outcomes'

The panel has 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 behaviour.

“The panel bore in mind that at the substantive meeting on 27 September 2019 the Fitness to Practise Committee identified a risk of repetition. The panel today determined that the risk of repetition previously identified remains a live issue as there is no information before it to suggest that Mrs Thomson has done anything to address the concerns. The only information that Mrs Thomson has provided to the panel is contained in an email to the NMC dated 4 February 2020 noted above. Accordingly, there is nothing to suggest to the panel that her insight into her misconduct has developed. Given the continuing risk, the panel decided that a finding of impairment remains necessary for the protection of the public.

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 Thomson’s fitness to practise remains impaired.”

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

“The panel first considered whether to take no further action but concluded that this would be inappropriate in view of the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the risk of repetition identified and seriousness of the case.

In the light of Mrs Thomson's stated current intention not to return to nursing or midwifery it was clear to the panel that a conditions of practice order would be both unworkable and inappropriate.

The panel next considered the imposition of a further period of suspension. It was of the view that a suspension order would both protect the public and address the public interest. In its consideration of a further suspension order, the panel considered whether a striking-off order may be more appropriate. The panel at the substantive hearing on 27 September 2019 considered that a striking off order would be disproportionate and it is the view of this reviewing panel that, at this point, it would still be a disproportionate sanction.

In view of the relatively short period since Mrs Thomson was suspended, the panel considered that it is appropriate to give her further time to reflect on her decision to leave the professions and, if she is determined to do so, the manner in which she would wish to leave.

The panel has noted correspondence to Mrs Thomson from the NMC which appears to offer her ways of leaving the register without the stigma of a striking-off order. The panel considers that it may be in Mrs Thomson's interest for her to give further consideration to that correspondence.

In these circumstances, the panel concluded that a further 12 month suspension order would be the appropriate and proportionate response and would afford Mrs Thomson adequate time to consider her future intention either by remediation or removal from the register."

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Thomson's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and the written responses from Mrs Thomson that were before the previous review panel dated 4 February 2020.

The panel noted that the email dated 4 February 2020 from Mrs Thomson to the NMC stated:

'... I have nothing further to add, as previously stated I have no wish, intention or desire to re engage in any form of nursing or midwifery , I understand the process of the NMC and await further outcomes'

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 Thomson's fitness to practise remains impaired.

The panel noted that since the original substantive hearing and the first reviewing hearing, no new information had been provided by Mrs Thomson. The panel noted that the original substantive hearing panel made a number of recommendations to Mrs Thomson to provide further information. Mrs Thomson has not provided any of the information suggested and has appeared to disengage from the process. In the time period between the review hearing in March 2020 and today's hearing, no information had been provided regarding any insight, remediation or any intention to be removed from the register.

The panel considered that the misconduct in this case was remediable but that there was no evidence to suggest that Mrs Thomson had developed insight into her past misconduct or that she had taken any steps to address the deficiencies identified with her practice by the previous panel. The panel considered that a risk of repetition remains and that patients would be placed at risk of harm if Mrs Thomson were able to practise unrestricted. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 public confidence in the profession would be undermined if a finding of impairment were not made in circumstances where a nurse administered Botox to three separate patients without obtaining a prescription as was required. The panel also determined that a finding of impairment remains necessary on public interest grounds.

For these reasons, the panel finds that Mrs Thomson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Thomson'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 risk of repetition identified and lack of engagement, as taking no action would not restrict Mrs Thomson's practice. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

Bearing in mind Mrs Thomson's stated intention not to return to nursing practice, the panel considered allowing the order to lapse on expiry, which would mean that her registration would also lapse. The panel noted that on 5 March 2020 the NMC's Monitoring and Compliance Officer advised Mrs Thomson that if she wanted such an outcome she should provide as much evidence as possible regarding her intentions for future practice, including a signed declaration about her intention not to practice nursing or midwifery in the next five years. However, nothing had been heard from her since then. The panel considered that clear evidence beyond the email dated 4 February 2020 stating "... *I have no wish, intention or desire to re engage in any form of nursing or midwifery*" would be required before it could consider allowing the order to lapse. It considered that allowing the

order to lapse would not adequately protect the public if Mrs Thomson decided to return to practice. Furthermore, the panel considered that it was important to maintain the standard of requiring good evidence to be brought before a panel to show an intention not to practice, and to simply allow the order to lapse would not be in the NMC's best interests.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the risk of repetition identified, an order that does not restrict Mrs Thomson's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

In the light of Mrs Thomson's stated intention in 2020 not to return to nursing and her current lack of engagement, it was clear to the panel that a conditions of practice order would be both unworkable and inappropriate.

The panel next considered imposing a further suspension order. The panel noted that Mrs Thomson has not demonstrated any remediation into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Thomson no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances, particularly as Mrs Thomson has not engaged with the NMC at all since the last review hearing.

The panel determined that it was necessary to take action to prevent Mrs Thomson from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will replace the current suspension order with immediate effect in accordance with Article 30(2).

This decision will be confirmed to Mrs Thomson in writing.

That concludes this determination.