

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

**Substantive Order Review Meeting
Monday, 18 December 2023**

Virtual Meeting

Name of Registrant: Attila Toth

NMC PIN 09E0094C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – May 2009

Relevant Location: Blackpool

Type of case: Misconduct

Panel members: Alan Greenwood (Chair, lay member)
Laura Scott (Registrant member)
Jocelyn Griffith (Lay member)

Legal Assessor: Graeme Dalglish

Hearings Coordinator: Sharmilla Nanan

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of
2 February 2024 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 Mr Toth's registered email address by secure email on 15 November 2023.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 18 December 2023 and inviting Mr Toth 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 Mr Toth 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 striking-off order. This order will come into effect at the end of 2 February 2024 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 panel on 4 January 2023.

The current order is due to expire at the end of 2 February 2024.

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 being a registered nurse,

1. [PRIVATE]

2. On 9 September 2020 had in your possession, namely in your car, a box containing 3 Fentanyl transdermal patches prescribed to Resident A which you were not entitled to have.

3. Your actions at charge 2 above were dishonest in that you knew you were not entitled to have Resident A's Fentanyl transdermal patches in your private possession but did so anyway.

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

The original reviewing panel decided the following with regard to impairment:

'The panel next went on to decide whether as a result of the misconduct, Mr Toth's fitness to practise is currently impaired.

[PRIVATE] However, Mr Toth took the medication from the Home in inappropriate circumstances, and they were found in his car. The Fentanyl patches were intended for patients and taking them could have led to a depletion in stock. Therefore, the NMC formed the view that if this behaviour is not addressed then it has the potential to put future patients at the risk of harm.

The NMC submitted that Mr Toth remains a risk to the health, safety and wellbeing of the public. The NMC submit that a finding of impairment is therefore required for the protection of the public and to uphold professional standards and behaviour

With regard to future risk, the NMC submitted that it may assist to consider the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin) namely (i) whether the concerns are easily remediable;

(ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

The NMC referred to their guidance “Can the concern be addressed?” FTP-13a. The NMC guidance states that non-clinical concerns and concerns in relation to dishonesty are harder to remediate from but not impossible. However, it was the NMC’s submission that Mr Toth has not been engaging in the NMC fitness to practise process, nor has he responded to the concerns raised or provided any level of insight.

In its consideration of impairment, the panel had regard to all the circumstances and it considered the test for impairment as set out in Dame Janet Smith’s Fifth Shipman Report, as discussed and applied in the case of Council for Healthcare Regulatory Excellence v NMC and Grant [2011] EWHC 927 (Admin). It accepted the advice of the legal assessor.

The panel found that all four limbs of the test were engaged in this case. The test is expressed in Grant 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

[PRIVATE] It considered that by dishonestly removing the drugs from the Home, Mr Toth placed Patient A at potential risk of harm by depriving them of their prescribed medication.

The panel found that Mr Toth's misconduct had breached the fundamental tenets of the nursing profession, namely trust and honesty, and he has therefore brought its reputation into disrepute. It was satisfied that public confidence in the nursing profession would be undermined if the panel did not conclude that a finding of dishonesty should result in a finding of impairment.

Regarding insight, the panel was mindful that Mr Toth has not engaged with these proceedings in a meaningful way. Mr Toth has not provided challenge to any of the allegations or points of evidence set out in the statement of Ms 1. Nor has he provided any reflection that demonstrates insight into the incident and his conduct. He has not demonstrated that he understands that his conduct was dishonest. Finally, Mr Toth has not provided evidence of insight or demonstrated any remorse for his actions on 9 September 2020.

Whilst the panel was satisfied that the misconduct in this case is capable of being addressed and remedied, it found that there was no evidence before it from Mr Toth as to whether he has taken any steps to remedy his misconduct.

Given that Mr Toth has not meaningfully engaged with these proceedings, there is no evidence in respect of his understanding of the impact his actions would have on the public and the profession. There is also no evidence as to how Mr Toth would act differently if he were to be in a similar situation in the future. The panel noted that Mr Toth did, however, offer to immediately resign prior to the discovery of the drugs in his car.

Accordingly, the panel concluded that there remains a real risk of repetition of the misconduct, and that in all the circumstances of this case a finding of current impairment is required on the grounds of public protection.

In addition, 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 Mr Toth's fitness to practise impaired on the grounds of public interest.

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

The original panel decided the following with regard to sanction:

'The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. This was a single, isolated incident and was out of character. No harm was caused, and Mr Toth has shown some insight, albeit not to the incident itself
[PRIVATE]

With the importance of proportionality in mind and balancing the seriousness of this case with the significant mitigatory factors, the panel concluded that a suspension order was the proportionate sanction in this

case. This will serve to protect the public. With the wider public interest in mind, the panel decided to impose the maximum period of suspension of twelve months to appropriately reflect and mark the seriousness of the case.

The panel considered whether a striking-off order would be proportionate. It took account of the requirement for any sanction to be proportionate, which means imposing the least restrictive sanction in all the circumstances of the case. The panel has taken account of the aggravating and mitigating factors and taking account of all the circumstances of this case has decided that to permanently remove Mr Toth from the register, at this stage, would go further than was necessary to protect the public and the public interest. The panel was satisfied that the maximum period of suspension will sufficiently serve to uphold the objectives of the regulator, protect the public and maintain public confidence in the profession. The panel decided that to impose a striking off order at this stage would be disproportionate, punitive and unfair.

Whilst the panel acknowledges that a suspension order may have a punitive effect, it found that any hardship such an order will inevitably cause Mr Toth is outweighed by the public interest in this case.

The panel concluded that a twelve month suspension order is the proportionate sanction in this case and will sufficiently maintain public confidence in the profession, and send to the public and the profession a clear message about the standards of behaviour required of a registered nurse.

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, including a striking off order.

The panel considered that a future panel reviewing this case would be assisted by:

- *Mr Toth's engagement with the NMC and his attendance at the next review of this order*
- *[PRIVATE]*
- *A written reflective piece by Mr Toth centred on the impact of his actions on patients, colleagues and the public*
- *Any evidence of up-to-date training and keeping up to date with professional nursing developments*
- *Any relevant references relating to any paid or unpaid work that Mr Toth has undertaken.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Toth'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, which included the NMC bundle.

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 Mr Toth's fitness to practise remains impaired.

The panel noted that the original panel did not have any challenge to the allegations or points of evidence. Today's panel also noted that at the substantive meeting, Mr Toth did not provide any reflection that demonstrated his insight into the incident and his conduct, nor did he demonstrate an understanding that his conduct was dishonest or provide any evidence of insight and remorse for his actions on 9 September 2020. At this meeting, today's panel noted that it had no new information from Mr Toth addressing these concerns.

The panel bore in mind that Mr Toth has not engaged with the NMC since June 2022 and therefore has not provided any information about the steps he has taken to strengthen his nursing practice.

The original panel decided that Mr Toth was liable to repeat matters of the kind found proved. Today's panel has received no new information regarding Mr Toth's insight, remorse or strengthened practice. In light of this the panel decided that there is a real risk of repetition as Mr Toth remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

In addition, the panel concluded that confidence in the nursing profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Toth's impairment on the grounds of public interest grounds.

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

Decision and reasons on sanction

Having found Mr Toth'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 decided that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Toth'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 Mr Toth'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 Mr Toth'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 original meeting and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Toth's misconduct.

The panel next considered imposing a further suspension order. The panel noted that Mr Toth has not meaningfully engaged with the NMC since June 2022, prior to the date of the substantive meeting held in January 2023. Further, the panel was of the view that Mr Toth has been provided with sufficient time to address his failings. It noted the guidance provided by the panel at the substantive meeting and that he has not undertaken any of these steps. The panel bore in mind that Mr Toth has not provided any evidence to demonstrate that he no longer poses a risk to the public. The panel decided that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel concluded that it was necessary to take action to prevent Mr Toth from practising in the future and 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 take effect upon the expiry of the current suspension order, namely at the end of 2 February 2024 in accordance with Article 30(1).

This decision will be confirmed to Mr Toth in writing.

That concludes this determination.