

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

**Substantive Order Review Hearing
Wednesday, 19 July 2023**

Virtual Hearing

Name of Registrant:	Monica Dolores Smythe
NMC PIN	07B3027E
Part(s) of the register:	Registered Nurse – Learning Disabilities – December 2007
Relevant Location:	Birmingham
Type of case:	Misconduct
Panel members:	Nicholas Rosenfeld (Chair, Lay member) Dr Natasha Duke (Registrant member) Claire Corrigan (Lay member)
Legal Assessor:	Sanjay Lal
Hearings Coordinator:	Xenia Menzl
Nursing and Midwifery Council:	Represented by Ben Edwards, Case Presenter
Miss Smythe:	Not present and unrepresented
Order being reviewed:	Suspension order (9 months)
Fitness to practise:	Impaired
Outcome:	Striking-Off order to come into effect on 10 August in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Smythe was not in attendance and that the Notice of Hearing had been sent to Miss Smythe's registered email address by secure email on 14 June 2023.

Mr Edwards, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Smythe's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Smythe has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Smythe

The panel next considered whether it should proceed in the absence of Miss Smythe. The panel had regard to Rule 21 and heard the submissions of Mr Edwards who invited the panel to continue in the absence of Miss Smythe. He submitted that Miss Smythe had voluntarily absented herself.

Mr Edwards referred the panel to an email from Miss Smythe, dated 27 June 2023, which stated:

'I am sick and tired of telling you and your colleagues that I'm not interested in your hearings or nursing anymore.' [sic]

And;

'This will be the last time I will respond to you with your nonsense, I paid my resigistration for many months even though I was unable to practice. I'm not prepared to listen to anything you have to say.' [sic]

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Smythe. In reaching this decision, the panel has considered the submissions of Mr Edwards, the representations from Miss Smythe, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Smythe;
- Miss Smythe has informed the NMC that she is not attending the hearing and no longer wishes to engage with the process;
- This is a mandatory review;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Smythe.

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 at the end of 10 August 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 9 months by a Fitness to Practise Committee panel which sat from 11 to 12 October 2022.

The current order is due to expire at the end of 10 August 2023.

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:

1. *On 23 May 2021 whilst employed as a registered nurse at Wyndley Grange Nursing Home:*

a) *Failed to provide safe and appropriate care to Patient A in that you:*

i. *Failed to identify or carry out regular monitoring of her blood glucose levels knowing that her blood glucose was high and thus unstable that day;*

ii. *Failed to record any blood glucose recordings on the NEWS chart or in any other patient records;*

iii. *Failure to record other observations including temperature, pulse, blood pressure and oxygen saturations regularly or at all as part of Patient A's care in order to carry out a full assessment of the patient;*

iv. *Failed to correctly interpret the readings on the blood glucose machine;*

v. *Failed to detect that Patient A's condition was deteriorating;*

vi. *Failed to 'push' fluids when expressly instructed to do so by the senior nurse;*

vii. *Failed to prioritise the care of Patient A;*

viii. Failed to give a handover to the paramedics despite being the nurse responsible for the patient.

2. In or around August 2020 whilst employed at Roxton Nursing Home, you:

a) [...]

b) Failed to ensure that Resident C's took his oral tablet medication and left the tablets on the bedside table;

c) Recorded that Resident D had received two paracetamol tablets when in fact he had only received one.

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 finds that the first three limbs of the Grant test are engaged in this case. It considered that patients were put at risk and Patient A was caused physical harm as a result of Miss Smythe's misconduct. Miss Smythe's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Smythe's insight has not yet developed. The panel considered that Miss Smythe has not demonstrated an understanding of how her actions put the patients at a risk of harm, or an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession.

The panel noted there was reference to a reflective piece provided by Miss Smythe, but that document had not been provided to the panel. It had also not been provided with the evidence of relevant training Miss Smythe had completed.

The panel had nothing before it to demonstrate Miss Smythe had taken steps to strengthen her practice. The only information the panel had, was a report from the Case Preparation and Presentation Team, who recommended a meeting is held as it is unlikely that Miss Smythe would “engage with the process at this stage given her clear expression to the case coordinator on 23 May 2022 that she does not want any representation, will not be paying her registration fees and does not want to be contacted by the NMC. She explained that she does not intend to practise again.”

Further, the panel noted that Miss Smythe has not engaged with the NMC and has not returned a completed Case Management Form (CMF).

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Smythe has taken steps to strengthen her practice. The panel had no information before to evidence any steps Miss Smythe has taken to strengthen her practice. It had no learning, no recognition of her failures, and nothing to address the impact of her actions on the wider public interest.

The panel is of the view that there is a risk of repetition based on Miss Smythe’s lack of insight and strengthened practice. The panel therefore 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 as a member of the public, aware of the circumstances in this case would be concerned if a nurse with these concerns was allowed to practise unrestricted.

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 Miss Smythe's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Miss Smythe'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 considered that there were no proportionate, measurable and workable conditions that could be imposed that would adequately address the concerns and protect the public.

The panel considered Miss Smythe's clear intention not to engage with the process and that there was no willingness on her behalf to undertake any retraining. In light of this, the panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel considered the period of suspension would allow Miss Smythe sufficient time to consider her plans with regard to her nursing career and address her misconduct should she wish to return to nursing.

The panel 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 Miss Smythe'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.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Smythe'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 email from Miss Smythe, dated 27 June 2023. It has taken account of the submissions made by Mr Edwards on behalf of the NMC.

Mr Edwards outlined the background of the case to the panel and referred it to the relevant pages in the bundle. He referred the panel to the last panel's suggestions on what a future panel may be assisted by and submitted that Miss Smythe has not provided any detailed reflective statement, has not engaged with the NMC in a meaningful way nor has she provided any information on how she intends to address her failures in the future.

Mr Edwards referred the panel to Miss Smythe's email, dated 27 June 2023, in which she states:

'I an sick and tired if telling you and your colleagues that I'm not interested in your hearings or nursing anymore.'[sic]

Mr Edwards submitted that Miss Smythe has made it clear that she is not willing or prepared to engage with the NMC in the future, nor has she stated what she plans to do in the future. He submitted that the panel had no information before it to demonstrate that Miss Smythe understands how her actions have put patients at risk of harm, how her behaviour was wrong or how her actions may have an impact on the reputation of the nursing profession. He further submitted that she has not demonstrated that she had strengthened her nursing practice in the nine months since the substantive order was imposed.

Mr Edwards submitted that the panel had nothing before it to demonstrate that Miss Smythe was able to practice safely and effectively, nor has she shown any insight into her failings and there was no evidence that she had taken any steps to remediate the misconduct that led to her being referred to the NMC.

Mr Edwards submitted that the last panel had found that the misconduct found proved was remediable and capable of being rectified by Miss Smythe by engagement with the NMC and further retraining. However, he submitted, that Miss Smythe has not taken any steps to do so, despite being given an opportunity by the last panel to do so and to strengthen her practice. He therefore invited the panel to find that Miss Smythe's practice remains impaired.

Mr Edwards then addressed the panel regarding sanction. He submitted that it would not be appropriate to let the order lapse or revoke the order, or extend the suspension order further. He reminded the panel that Miss Smythe, since the substantive meeting, has not taken up the opportunity to engage with her regulator, nor has she demonstrated any further insight or willingness to strengthen her practice or remediate the misconduct found proved.

Mr Edwards submitted that given that the panel had no information:

- to show that Miss Smythe is able to practise safely;
- has not shown any willingness to engage with the NMC proceedings;
- has not given evidence of insight or otherwise into her failings that led to the referral in the first place; and
- her lack of engagement and understanding of her misconduct

the panel might find that the situation had deteriorated since the last meeting. He reminded the panel of the email sent by Miss Smythe on 27 June 2023 in which she still denies the charges and seems to put blame on others. He submitted that this letter demonstrates that there is no real progress in Miss Smythe's insight and that her attitude is fundamentally incompatible with remaining on the register.

Mr Edwards therefore invited the panel to impose a striking-off order.

The panel also had regard to Miss Smythe's email dated 27 June 2023.

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 Miss Smythe's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Smythe had not yet developed any insight. This panel considered Miss Smythe's email in which she states:

'The last hearing was a farce, and that put me right off [...]

This will be the last time I will respond to you with your nonsense [...]

I'm not prepared to listen to anything you have to say.'

The panel noted that Miss Smythe has not engaged with the NMC in any meaningful way since she was suspended at the original meeting when the suspension order was imposed. It noted that her lack of engagement, and her comments in her email, demonstrated attitudinal issues, which seemed more entrenched since the order was imposed. The panel was of the view that her comments in her email were unprofessional and disrespectful towards her regulator.

The panel further noted that the email did not contain any insight into her failings, nor did Miss Smythe demonstrate that she had remediated her failings or strengthened her practice. The panel in particular noted in her email Miss Smythe's placed blame on her colleagues, rather than address her own clinical failings.

The panel was extremely concerned that since the last hearing Miss Smythe has not demonstrated any remorse, or apologised to the patient, their family or her colleagues. She has not shown any insight into the impact her actions had on her patients, and she placed them at a risk of harm. Miss Smythe has not shown any insight into how her actions had negatively affected the reputation of nursing, or has she failed to uphold standards.

The panel determined that Miss Smythe was liable to repeat matters of the kind found proved. The panel was of the view that Miss Smythe has not taken any effective steps to gain insight, strengthen her practice or remediate her failings. The panel was of the view that Miss Smythe's insight has deteriorated since the last meeting and that therefore the risk to the public has increased. 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 Miss Smythe's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Smythe'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 and the public protection issues identified. 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, the public protection issues identified, an order that does not restrict Miss Smythe's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Smythe'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 Miss Smythe'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 Miss Smythe's misconduct given her escalating and what would appear to be hardening views as outlined in her recent email to the NMC.

The panel next considered imposing a further suspension order. The panel noted that Miss Smythe has not shown remorse for her misconduct. The panel referred itself to the NMC

sanction guidance and in particular that a suspension order is only appropriate where there is:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel found that Miss Smythe has not demonstrated any insight into her previous failings and has demonstrated further attitudinal issues in her email dated 27 June 2023, which raise fundamental questions about her professionalism. The panel noted that Miss Smythe has not undertaken further training to address her clinical failings. The panel was of the view that it did not have evidence before it to show that Miss Smythe no longer posed a risk to the public. The panel noted that registrants have a duty to engage with their regulator. The panel determined that a further period of suspension would not serve any useful purpose, particularly due to Miss Smythe's disrespect toward the NMC and her unwillingness to engage with her regulator in a meaningful way. It determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel determined that the public interest will be best served by not prolonging proceedings with another period of suspension and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel determined that such an order was necessary to maintain public confidence in the profession. Given Miss Smythe's lack of insight, remorse, remediation, and engagement there has developed a deepening of attitudinal issues, which the panel found is fundamentally incompatible with Miss Smythe remaining a registered professional.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 10 August 2023 in accordance with Article 30(1).

This decision will be confirmed to Miss Smythe in writing.

That concludes this determination.