

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

**Substantive Order Review Meeting
Monday, 26 June 2023**

Virtual Hearing

Name of Registrant: Philip Harvey Dry

NMC PIN 90Y0576E

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (06 November 1993)

Relevant Location: South Tees

Type of case: Misconduct

Panel members: Shaun Donnellan (Chair, lay member)
Melanie Lumbers (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Opeyemi Lawal

Mr Dry: Not present and unrepresented

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 9 August 2023 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 Dry's registered email address by secure email on 29 March 2023.

The panel took into account that the Notice of Meeting provided details of the review including the fact that it would be heard no sooner than 26 June 2023 and the meeting will be conducted in private.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Dry 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 strike-off order. This order will come into effect at the end of 9 August 2023 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 conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 11 January 2022. This followed his failure to adhere to an undertaking made on 2 March 2019.

The current order is due to expire at the end of 9 August 2023.

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 was as follows:

'That you, a registered nurse:

1. *Having agreed undertakings on 2 March 2019 which were recommended in the light of a case to answer being found in respect of the regulatory concerns set out in Schedule 1, failed to remedy the issues identified in your practice;*

Schedule 1

1. *Failed to ensure that patient safety was protected in that you: a*
 - a. *Breached safe medication administration protocols;*
 - b. *Failed to keep adequate nursing documentation;*
 - c. *Failed to identify and escalate clinical concerns*
 - d. *Communicated poorly with your colleagues;'*

The original panel determined the following with regard to impairment:

'The panel had no material evidence before it from Mr Dry in relation to insight, remediation, and remorse. The panel was therefore of the view that there is a high risk of repetition and subsequently a risk of serious harm to patients should he be permitted to practise without restriction. Further, since the time of the concerns, Mr Dry has not provided a reflective response to the concerns addressing the risk of repetition. There is no evidence that Mr Dry has changed his practice as a result of concerns outlined in Schedule 1.

The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 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 his fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Dry's fitness to practise is currently impaired both on the grounds of public protection and the wider public interest'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Mr Dry's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The concerns in this case relate mostly to clinical failings in respect of medicines administration, record keeping, communication and escalation and the panel noted that the concerns outlined are remediable and can be addressed by conditions of practice. The panel was of the view that a conditions of practice order would be sufficient to protect the public whilst marking the seriousness of the identified concerns.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would be disproportionate at this time. A suspension order would not be a reasonable response in the current circumstances of this case, at least until Mr Dry is given a further opportunity to engage with the NMC, explain how he has remediated his fitness to practise, and set out his future practice intentions to a reviewing panel. A future reviewing panel would have all the sanctions available to it, including a suspension or strike off order.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Dry'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.

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 Dry's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Dry had insufficient insight. At today's meeting the panel determined that Mr Dry has shown no further insight whatsoever into

the concerns raised against him or demonstrated an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession or how it had impacted the patient.

In its consideration of whether Mr Dry has taken steps to strengthen his practice. The panel noted that Mr Dry has not engaged with the NMC since October 2019; which was prior to his substantive hearing nor has he provided evidence to suggest that he has addressed the concerns raised against him.

The original panel determined that Mr Dry was liable to repeat matters of the kind found proved. Today's panel has received no new information to suggest that the risk of repetition has lessened. In light of this the panel determined that Mr Dry is 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.

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 Mr Dry's fitness to practise remains impaired.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Dry'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 Dry'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 Dry's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that Mr Dry has not complied with undertakings agreed in 2019 and has not complied with any of his conditions of practice order imposed in January 2022.

The panel next considered imposing a suspension order. The panel noted that Mr Dry has not provided evidence of steps taken to strengthen his practice or any insight into his failings. In these circumstances the panel determined that a period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mr Dry 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. The panel was mindful that Mr Dry had not engaged with his regulator at all since October 2019 notwithstanding an intervening substantive hearing and this review. The panel therefore directs the registrar to strike Mr Dry's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 9 August 2023 in accordance with Article 30(1).

This will be confirmed to Mr Dry in writing.

That concludes this determination.