

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Friday, 9 August 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Parigul Afghan

NMC PIN: 80Y2865E

Part(s) of the register: Registered Nurse – Sub Part 2
Adult Nurse (Level 2) – 13 May 1982

Type of case: Incorrect/Fraudulent entry

Panel members: Christopher Taylor (Chair, Registrant member)
Rajesh Jayadevan (Registrant member)
Wendy West (Lay member)

Legal Assessor: Ian Ashford-Thom

Hearings Coordinator: Amie Budgen

Nursing and Midwifery Council: Represented by Lily Belfer, Case Presenter

Ms Afghan: Present and represented by Nikita McNeill,
instructed by Lester Aldridge Solicitors

Outcome: **Registration entry incorrectly made**

Direction: **The panel directs the Registrar to remove Ms
Afghan’s entry on the register in accordance
with Article 26(7) of the Order**

Direction: **Interim suspension order (18 months)**

Details of charge

'That you:

- 1. On your revalidation submission dated 21 November 2021, you declared that you had completed 450 hours of registered nursing practice when you had completed fewer than 450 hours of registered nursing practice in the three years prior to your revalidation submission.*
- 2. On your revalidation submission dated 21 November 2021, you declared that you had completed the requisite Continuing Professional Development (CPD) when you had not completed the requisite CPD in the three years prior to your revalidation submission.*

And thereby an entry on the nursing part of the NMC register in the name of Mrs Parigul Afghan, PIN 80Y2865E was fraudulently procured and/or incorrectly made.'

Background

The charges arose whilst you were no longer working as a registered nurse due to being subject to an Interim Order as part of separate, unrelated, NMC proceedings. You were subject to these other NMC proceedings between 27 April 2018 and 23 October 2023 where you were given an Interim Conditions of Practice Order. You are alleged to have submitted false information within your revalidation submission on 21 November 2021, namely ticking 'Yes' to completing 450 hours of practice as well as taking part in CPD, whilst you had not worked as a registered nurse since 2018.

Decision and reasons on the facts

At the outset of the hearing, Ms McNeill, on your behalf, informed the panel that you made full admissions to both charges 1 and 2.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

Submissions

Ms Belfer, on behalf of the Nursing and Midwifery Council (NMC) referred the panel to the background of the case and the supporting evidence. Ms Belfer reminded the panel that whilst you have admitted the charges, the burden of proof is on the NMC as to whether the information submitted in your revalidation was inserted incorrectly or fraudulently.

Ms Belfer, having referred the panel to parts of the evidence bundle, invited the panel to consider whether the incorrectly inserted information within your revalidation submission was a mistake, or deliberate as part of its decision.

Ms Belfer informed the panel that you were subject to other NMC proceedings, which are separate to this case. She submitted that you have now retired from nursing practice and have no intention to return to the profession.

Ms McNeill, on your behalf, submitted that it is a matter of the panel to determine, on the balance of probabilities, whether the information within your revalidation submission was made incorrectly.

Ms McNeill submitted that you have been a nurse for over 35 years, primarily working in care homes. Ms McNeill submitted that at no point have you sought to deny that the revalidation submission was made incorrectly. She informed the panel that you have been subject to separate NMC proceedings and had an Investigating Committee Interim Order (ICIO) imposed in 2018, which restricted your practice as a registered nurse. Ms McNeill submitted that as a result, you resigned from your former nursing role. She submitted that this confirms that you did not practice as a registered nurse, nor work in a clinical role throughout the duration of the separate NMC proceedings.

Ms McNeill submitted that you have had numerous Interim Order Review Hearings and have informed each panel that you have not worked as a registered nurse and have no intention to return to nursing. She referred the panel to evidence within the evidence bundle which confirms that you had relayed this information numerous times.

Ms McNeill submitted that you made a mistake when entering the information in your revalidation, due to you misunderstanding a phone call with a staff member at the NMC. She submitted that you did not act on the NMC email reminders to submit your revalidation as you had no intention to revalidate at this time. However, you sought an extension as you had been charged the statutory fee to remain on the register. Ms McNeill submitted that the NMC colleague informed you that you could revalidate despite being subject to an interim order, which you misinterpreted as “you should revalidate”. She submitted that you admit to mistaking this advice for instructions to do so, and that this admission can evidence that you made a mistake rather than carrying out a deliberate act to deceive the NMC.

Ms McNeill referred the panel to the following guidance:

Soni v General Medical Council [2015] EWHC 364, *Holroyde J, para.69*, before a panel could infer dishonesty from a set of facts, it would have to:

‘...consider whether the evidence showed other possible explanations, and if so, whether it could safely conclude that these other explanations were less probable than deliberate dishonesty.’

As well as:

Jenyo v General Medical Council [2016] EWHC 1708 Andrews J (at para.32):

‘No-one would quarrel with the proposition that it is incumbent upon a panel to consider an alternative innocent explanation given by the doctor for his behaviour, and that it should do so by reference to the probabilities, bearing in mind the context of the behaviour and all of the evidence...’.

Ms McNeill submitted that there is no evidence to suggest that you acted dishonestly, no attempt to mislead the NMC, nor would you benefit from fraudulently procuring the NMC. Therefore, Ms McNeill submitted that, in light of your admissions, the incorrect entry can be removed from the NMC register and that you are aware that if you intended to return to the register in future, you would need to re-apply.

The panel heard and accepted the advice of the legal assessor.

Decision on Incorrect/Fraudulent Entry

The panel determined that your entry was made incorrectly and was not fraudulently procured.

In reaching its decision, the panel noted that you have been engaging with the NMC since 2018 in relation to separate, parallel proceedings. Whilst the panel make no findings on the separate proceedings, it considered that you stated to the NMC on numerous occasions, that you were not practising as a registered nurse. Further, the panel considered that you have no previous finding of dishonesty within the separate proceedings. The panel noted Ms McNeill’s submissions that you admit to misunderstanding the NMC’s instructions regarding the revalidation process.

The panel did consider that as part of your long career as a registered nurse, you would have completed the revalidation process prior to this event, as well as supporting junior colleagues with the process in your former managerial role. However, it determined that, based on the evidence before it, including the determination letter of the Interim Order hearing which took place in October 2023, whereby you told the panel that you have no intention of returning to nursing practice; that you have made consistent accounts that you are not working as a registered nurse.

The panel determined that the NMC have not provided it with any evidence which contradicts your account, nor has the NMC provided any evidence to disprove the account you have given.

The panel considered your admissions to the charges, as well as your admission to making the application incorrectly. Having borne in mind that the burden of proof is on the NMC to prove the charges and does not rely on you to disprove them, the panel were not satisfied that the burden of proof had been met to disprove your version of events.

The panel accepted the advice of the legal assessor who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67, in which Lord Hughes stated:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel bore in mind that for an entry to be fraudulent there must have been a deliberate attempt to mislead, whereas an incorrect entry involves a mistake or genuine error.

The panel therefore found that the entry on of the NMC register in the name of Ms Parigul Afghan, PIN 80Y2865E was incorrectly made, but not fraudulently procured.

Decision and reasons on direction

Having determined that you had incorrectly procured an entry on the NMC's register, the panel invited submissions on what direction, if any, to make in accordance with Article 26(7) of the 'Nursing and Midwifery Order 2001' (the Order).

Article 26(7) states:

'...If the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.'

Ms Belfer referred the panel to the guidance issued by the NMC on Fraudulent and Incorrect entries to the register. She submitted that applying for, or amending your entry on the register is not viable in this case as you do not meet the requirements to revalidate. She therefore invited the panel to remove your application from the register.

Ms McNeill submitted that you admit that you do not currently meet the requirements to practice as a nurse. She invited the panel to remove you from the register.

The panel heard and accepted the advice of the legal assessor.

Having found that your entry on the NMC register was incorrectly procured, the panel determined it is not appropriate to take no action.

The panel determined that, in light of the information above, there is no physical error in your entry on the register capable of amendment, and therefore the panel decided that the only appropriate order is to direct the Registrar to remove your entry from the register.

You will be notified of the panel's decision in writing. You have the right to appeal the decision under Article 38 of the Order. This order cannot take effect until the end of the 28 day appeal period or, if an appeal is made, before the appeal has been concluded.

Decision and reasons on interim order

Having directed that the Registrar remove your entry from the register, the panel then considered whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

The panel heard and accepted the legal assessor's advice.

The panel took account of the submissions made by Ms Belfer. She invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period.

Ms McNeill submitted that whilst you have no intentions to return to nursing practice, you would need to re-apply to the register to enable you to practice again and therefore an interim order is not necessary to cover the appeal period. Ms McNeill stated that an Interim Suspension Order was not required as you as you admit that your registration is incorrectly made and are therefore extremely unlikely to appeal. She submitted however, that should the panel impose an interim order to cover the appeal period, it is not necessary for the duration of this interim order to last for 18 months.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision on whether to impose an interim order, the panel had regard to the reasons set out in its decision on the facts and its decision to direct the Registrar to remove your entry from the Register. It also had regard to the NMC's published Guidance on Fraudulent and Incorrect entry cases. It noted that the imposition of an interim order is not an automatic outcome but is a matter for the panel's discretion in the circumstances of

the case, having regard to the public interest in maintaining the integrity of the register. It also had regard to Article 31 of the Order and the NMC's Guidance on interim orders.

When considering public protection, the panel considered that your entry on the register, having been incorrectly made, based on your admitted failure to complete the necessary number of practice hours, presents a significant risk of harm to patients if you were allowed to practice at this time. The panel determined that although your expressed intention is to retire and not return to nursing, it is open to you to change your mind at any time. The panel considered that the substantive order does not become active for 28 days, and any return of practice when you have not successfully revalidated creates a real risk of significant harm to the public should an interim order not be made. The panel therefore concluded that an interim order is necessary on the ground of public protection.

When considering whether an interim order is otherwise in the public interest, the panel considered that members of the public expect nurses providing their care to be in possession of an up-to-date and valid registration at all times. The panel considered that a well-informed member of the public would be shocked if a nurse without a valid registration was allowed to provide care without being restricted. The panel considered that any failure to impose an interim order would damage the reputation of the profession and the NMC as regulator. The panel therefore concluded that an interim order is otherwise in the public interest.

The panel first considered whether to impose an interim conditions of practice order. It determined that an interim conditions of practice order was not appropriate in a case where the integrity of your entry on the professional register has been undermined.

The panel determined that an interim suspension order is necessary in this case.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined. The panel accept that the period to lodge an appeal is 28 days, however, should you choose to lodge an appeal it may take this period of time for the appeal to be heard. Whilst the panel accept that you are not likely to appeal, the panel are cogent of the fact that you can change your mind at any time.

If no appeal is made, then the interim order will lapse upon the removal of your entry from the Register 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.