

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

**Substantive Order Review Meeting
Thursday, 15 August 2024**

Virtual Meeting

Name of Registrant: Ross Allan

NMC PIN 98J0320S

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – October 2001

Relevant Location: North Ayrshire

Type of case: Misconduct

Panel members: Judith Webb (Chair, lay member)
Helen Chrystal (Registrant member)
Robert Marshall (Lay member)

Legal Assessor: Michael Hosford-Tanner

Hearings Coordinator: Audrey Chikosha

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 28 September 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 Allan's registered email address by secure email on 5 July 2024.

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 12 August 2024 and inviting Mr Allan 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 Allan 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 further 12-month suspension order. This order will come into effect at the end of 28 September 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 February 2023. This was reviewed on 13 March 2024 where the panel imposed a further 6-month suspension order.

The current order is due to expire at the end of 28 September 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, a registered nurse;

1) Between April 2015 and July 2016 you changed patients' prescriptions without the agreement of a qualified prescriber for one or more of the patients listed in Schedule 1.

(This charge is found NOT proved in relation to Patients A, B and S and found Proved in relation to Patient F).

2) Between April 2015 and July 2016, you failed to review patient's need for prescription medication for one or more patients listed in Schedule 2.

(This charge is found proved in relation to Patients A, B, C, D, E, F, G, H, K, and 3 and found not proved in relation to Patients M, Q and 1).

*3) Between April 2015 and July 2016, you failed to provide initial and or follow up appointments for one or more patients listed in Schedule 3. **(This charge is found proved in relation to Patients A, D, F, G, H, J, K, Q, R, 1, 2, 3, 4 5, and 8 and not proved in relation to Patient 7).***

4) '...'

*5) Between April 2015 and July 2016, you failed to adequately document care provided to one or more patients listed in Schedule 5. **(This charge is found NOT proved in relation to Patients D, G, J, N, O and 7. The charge is found proved in relation to Patients A, B, E, F, H, K, M, Q, R, S, 1 and 4).***

In light of this the panel found that Mr Allan's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct'.

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

'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 Allan's fitness to practise remains impaired. It noted that the misconduct found proved related to multiple, wide-ranging clinical failings. The panel did not have any new information before it to suggest that Mr Allan has demonstrated any insight into his misconduct. Further, there was no information before the panel to show that he had taken steps to strengthen his practice and remediate the concerns found proved, despite being provided with ample opportunity to do so. To the contrary, Mr Allan has not engaged with the NMC apart from an email dated 13 February 2024 in which he questioned the purpose of today's review hearing. In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined 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 Allan's fitness to practise remains impaired'

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

'Having found Mr Allan'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 determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Allan'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 Allan'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 Allan'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 hearing and concluded that a conditions of practice order would not adequately protect the public nor satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Allan's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Allan further time to fully reflect on his previous failings. The panel concluded that a further 6 month suspension order would be the appropriate and proportionate response and would afford Mr Allan adequate time to further develop his insight and take steps to strengthen his practice.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months would provide Mr Allan with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel gave serious consideration to imposing a striking off order as Mr Allan has not engaged with this process and the lack of engagement also concerns public protection. However, the panel determined that a striking off order at this stage would be disproportionate and the panel would like to provide Mr Allan a further opportunity to engage with the NMC.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 29 March 2024 in accordance with Article 30(1).

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.

Any future panel reviewing this case would be assisted by:

- A reflective piece addressing Mr Allan's insight and the impact of his misconduct on patients, colleagues and the wider nursing profession;*
- Information about Mr Allan's intention in relation to his nursing career;*
- Evidence of any completed relevant training;*
- Testimonials in relation to paid or unpaid work; and*
- Engagement with the NMC and Mr Allan's attendance at future review hearings'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Allan'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 practise safely, kindly and professionally. 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 Allan's fitness to practise remains impaired.

The panel noted that the misconduct in this case is wide-ranging and relates to multiple vulnerable patients. The panel had no information before it to suggest that Mr Allan has taken any remedial action or strengthened his practice. The panel bore in mind the length of time since the incidents, dating back to 2015, and noted that there has been no evidence provided that he has demonstrated any insight into his actions. Further, Mr Allan has not engaged with the NMC since his email of February 2024 in which he had asked why the substantive suspension order was being reviewed.

In light of this, the panel determined that there remains a real risk of significant harm and a risk of repetition. It therefore concluded that a finding of impairment in this case 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 Allan's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Allan'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 determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Allan'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 Allan'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 order on Mr Allan'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 hearing 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 Allan's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Allan further time to fully reflect on his previous failings. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford Mr Allan adequate time to

engage with the NMC, develop his insight and take steps to strengthen his practice. It would also give Mr Allan an opportunity to approach past and current health professionals to attest to his behaviour and conduct in workplace settings since the substantive hearing.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months which would provide Mr Allan with an opportunity to engage with the NMC and demonstrate that there has been a reduction in the risks identified. It considered this to be the most appropriate and proportionate sanction available.

However, the panel seriously considered imposing a striking-off order. It noted that since 2015, Mr Allan has not evidenced any remediation, insight or strengthened practice. He has also disengaged with the NMC and these proceedings and has not provided this panel with any of the recommended information as set out by the previous reviewing panel. The panel was of the view that as it has only been 18 months since the initial substantive hearing, in being kind and fair to Mr Allan, a further period of suspension would be appropriate to allow him a further opportunity to demonstrate that he can be a kind, safe and professional nurse. Alternatively, this period would allow him to confirm with the NMC what his intentions are, should he no longer wish to return to nursing.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 September 2024 in accordance with Article 30(1).

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.

Any future panel reviewing this case would be assisted by:

- A reflective piece addressing Mr Allan's insight and the impact of his misconduct on patients, colleagues and the wider nursing profession;
- Information about Mr Allan's intention in relation to his nursing career;
- Evidence of any completed relevant training;

- Testimonials in relation to paid or unpaid work; and
- Engagement with the NMC and Mr Allan's attendance at future review hearings'

This will be confirmed to Mr Allan in writing.

That concludes this determination.