

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

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

Virtual Meeting

Name of Registrant: Valerie Jean Howard

NMC PIN 09L0384E

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing – 27 October 2010

Relevant Location: Leicester

Type of case: Lack of competence

Panel members: Susan Thomas (Chair – Lay member)
Patience McNay (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Fiona Barnett

Hearings Coordinator: Vicky Green

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order extended (for 6 months)
to come into effect at the end of 21 September 2024
in accordance with Article 30(1)(a)**

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 Ms Howard's registered email address on 20 June 2024. The panel noted that the Notice was also posted to Ms Howard's registered address on 24 June 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 5 August 2024 and inviting Ms Howard 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 Ms Howard 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 extend the conditions of practice order for a period of six months. This order will come into effect at the end of 21 September 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 conditions of practice order imposed by a panel of the Fitness to Practise Committee on 24 August 2023.

The current order is due to expire at the end of 21 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, between 18 February 2016 and 22 March 2019 failed to demonstrate the standards of knowledge, skills and judgement required to practise without supervision as a band 5 nurse in that you:

1. *On or around 19 February 2016 administered medication, namely Lorazepam, to the wrong patient. – **Found proved***

2. *On or around 28/29 August 2016 failed to attend the patient's bedside when acting as a second checker for intravenous medication, namely Flucloxacillin. – **Found proved***

3. *On or around 1 September 2016 administered intravenous fluids/medication which was not prescribed. – **Found proved***

4. *On 1 April 2017:*
 - a) *Administered the incorrect medication to Patient C, namely 20mg of immediate release Oxycodone instead of the prescribed 20mg prolonged release Oxycodone; – **Found proved***

 - b) *Made the medication error in 4(a) above whilst you were subject to a first written warning for capability. – **Found proved***

5. *On 21 March 2019 administered an incorrect dose of medication, namely 7mg of Warfarin to Patient A. – **Found proved***

AND, in light of the above, your fitness to practise is impaired by reason of your lack of competence.'

The substantive panel determined the following with regard to impairment:

'The panel bore in mind this was a lack of competence case, nevertheless the panel had regard to the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads 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. ...*

The panel finds that patients were put at risk and there was a potential for physical and emotional harm as a result of Ms Howard's lack of competence. The panel determined that Ms Howard's lack of competence has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel went on to consider whether Ms Howard remained liable to act in a way that would put patients at risk of harm, would bring the profession into disrepute and breach the fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight and remediation.

The panel carefully considered the documentation and found that there was some evidence that demonstrated limited insight when Ms Howard repeatedly accepted the errors at the time. Additionally, the panel noted that there was evidence of a challenging and pressurised working environment and circumstances in her personal life which might have adversely affected Ms Howard's ability to practise safely and professionally.

Regarding insight, the panel considered Ms Howard's reflective piece and her admissions at the time and that she had developing insight. The panel has not been able to ascertain her current level of insight and therefore it was unable, with confidence to accept that Ms Howard had demonstrated anything other than limited insight into her lack of competence or that she had considered the impact on patients, colleagues, the reputation on the profession and the wider public interest.

In its consideration of whether Ms Howard has taken steps to strengthen her practice, the panel had no information from her since the incidents and her dismissal to demonstrate any steps Ms Howard may have taken. In light of this, the panel is of the view that there is a risk of repetition as there is no evidence based to demonstrate any strengthening of her practice Ms Howard may have

undertaken. 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold, protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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

The substantive panel determined the following with regard to sanction:

'Having found Ms Howard's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- *Repeated medication administrations errors over 3 years despite appropriate reflection and additional support at local level;*
- *Potential for patient harm; and*
- *Conduct which put patients at risk of suffering harm.*

The panel also took into account the following mitigating features:

- *Ms Howard's early admissions of her medication errors;*
- *Ms Howard's local reflections;*

- *Contextual factors such as :*
 - (i) pressure in the work environment and*
 - (ii) patients' challenging behaviour.*
- *Ms Howard's willingness to accept support at local level;*
- *Pressure in her personal life that could impact on her performance at work; and*
- *Ms Howard was described by colleagues as caring and compassionate nurse and always willing to help others.*

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 Ms Howard'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 Ms Howard'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 placing conditions of practice on Ms Howard'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;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *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 panel accepted that Ms Howard was willing to comply with support similar to conditions of practice in the past and may be willing to comply with conditions of practice order.

The panel had regard to the fact that these incidents happened a long time ago and that, other than these incidents, Ms Howard has had an unblemished career over a number of years as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Howard should be able to return to practise as a nurse.

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

The panel did consider more restrictive sanctions, but it was of the view that to impose a suspension order at this stage would be wholly disproportionate and would not be a reasonable response in the circumstances of your case. The panel acknowledged that a striking-off order was not an available sanction due to the type of case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public

confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must not administer medication, whether orally, via injection or infusion unless directly supervised by another nurse until such time that you have been signed off as competent by your line manager, mentor, or supervisor (who must be a registered nurse).*

- 2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.*

 - You must identify a personal development plan with your line manager, mentor or supervisor and keep a log of your progress towards addressing medicine administration.*

- 3. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from either your line manager, mentor or supervisor detailing your progress including the plan, log and any training.*

4. *You must provide a reflective piece for a reviewing panel covering the area of concern identified.*

5. *You must keep the NMC informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*

6. *You must keep the NMC informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*

7. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

8. *You must tell your case officer, within seven days of your becoming aware of:*
 - a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*

9. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
 - a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The period of this order is for 12 months.

The panel determined that this was the minimum time necessary for Ms Howard to find a nursing job and demonstrate adherence to the conditions as outlined above.

Before the end of the period of the order, a panel will hold a review hearing to see how well Ms Howard has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Evidence of Ms Howard's compliance with the conditions of practice order;*
- *Ms Howard's attendance at future review hearings;*

- *An indication of Ms Howard's future intentions in relation to her nursing career; and*
- *Testimonials and/or references from any work paid or otherwise.'*

Decision and reasons on current impairment

The panel accepted the advice of the legal assessor.

The panel has considered carefully whether Ms Howard's fitness to practise remains impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely 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.

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 had regard to the following recommendations of the last reviewing panel:

'Any future panel reviewing this case would be assisted by:

- *Evidence of Ms Howard's compliance with the conditions of practice order;*
- *Ms Howard's attendance at future review hearings;*
- *An indication of Ms Howard's future intentions in relation to her nursing career; and*
- *Testimonials and/or references from any work paid or otherwise.'*

The panel noted that since the substantive order was imposed, Ms Howard has not engaged with the NMC, provided any information about her current situation or future intentions in relation to her nursing career.

The panel had regard to the charges found proved at the substantive hearing and determined that, as they related to a lack of competence, in principle, they are capable of remediation. The panel noted that the lack of competence related to medication administration errors which had the potential to cause harm to patients. In the absence of any current insight or strengthened practice through practising under the conditions of practice order, the panel determined that there remains a risk of repetition due to Ms Howard's lack of competence and a consequent risk of harm to patients. The panel therefore decided that a finding of continued 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 a finding of continued impairment on public interest grounds is required as a fully informed member of the public would be concerned if a finding was not made where there is a risk of repetition of medication errors which would place patients at a risk of harm. The panel also determined that a finding of impairment was required to maintain and uphold proper standards of conduct and performance as there was no information before the panel to indicate that Ms Howard has addressed her lack of competence.

For these reasons, the panel finds that Ms Howard's fitness to practise remains impaired on both public protection and public interest grounds.

Decision and reasons on sanction

Having found Ms Howard'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 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 noted that Ms Howard's registration lapsed in 2021 and it is only active because of these proceedings. The panel had regard to the NMC guidance on '*Allowing nurse, midwives or nursing associates to be removed from the register when there is a substantive order in place*' (Reference: REV-3h Last Updated 24/04/2023). The panel noted that it is possible to allow an order to lapse with a finding of impairment in cases where a registrant does not want to continue practising. However, as the panel had no information about Ms Howard's future intentions, this would not be appropriate.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition and consequent risk of harm to patients identified, an order that does not restrict Ms Howard's practice would not protect patients. 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 lack of competence and the risk of repetition and public protection issues identified, an order that does not restrict Ms Howard's practice would not be appropriate. 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 would still be a proportionate and appropriate response. The panel noted that any conditions imposed must be proportionate, measurable and workable. The panel noted that Ms Howard has not engaged with the NMC since the imposition of the substantive conditions of practice

order and it had no information about her future intentions in respect of her nursing career.

The panel determined that given that the concerns relate to a lack of competence and are therefore clinical, it would be possible to formulate appropriate and practical conditions that would protect patients. It was also of the view that conditions of practice would continue to address the public interest in this case and uphold proper professional standards given that Ms Howard may re-engage and wish to return to practice as a nurse. However, the panel was mindful that there is a strong public interest in dealing with matters expeditiously and given Ms Howard's disengagement so far, if this persists then a conditions of practice order may not serve the public interest in the future.

The panel was of the view that to impose a suspension order would be disproportionate at this stage, given that Ms Howard may wish to return to nursing and address her lack of competence. The panel noted that a striking off order is not available until two years have elapsed since the substantive order takes effect in cases of lack of competence.

As Ms Howard has not engaged with the NMC in the last 12 months, the panel determined that extending the conditions of practice order for a period of six months will allow her to engage with the NMC, secure employment if she wishes to return to nursing and evidence compliance with the conditions of practice.

Accordingly, the panel determined, pursuant to Article 30(1)(a) to extend the conditions of practice order imposed by the previous panel for a period of six months.

The panel decided to extend the following conditions which it considered remained appropriate and proportionate:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any

course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must not administer medication, whether orally, via injection or infusion unless directly supervised by another nurse until such time that you have been signed off as competent by your line manager, mentor, or supervisor (who must be a registered nurse).*
- 2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.*
 - You must identify a personal development plan with your line manager, mentor or supervisor and keep a log of your progress towards addressing medicine administration.*
- 3. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from either your line manager, mentor or supervisor detailing your progress including the plan, log and any training.*
- 4. You must provide a reflective piece for a reviewing panel covering the area of concern identified.*
- 5. You must keep the NMC informed about anywhere you are working by:*
 - a) Telling your case officer within seven days of accepting or leaving any employment.*

- b) Giving your case officer your employer's contact details.*

- 6. You must keep the NMC informed about anywhere you are studying by:*
 - a) Telling your case officer within seven days of accepting any course of study.*
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.*

- 7. You must immediately give a copy of these conditions to:*
 - a) Any organisation or person you work for.*
 - b) Any agency you apply to or are registered with for work.*
 - c) Any employers you apply to for work (at the time of application).*
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

- 8. You must tell your case officer, within seven days of your becoming aware of:*
 - a) Any clinical incident you are involved in.*
 - b) Any investigation started against you.*
 - c) Any disciplinary proceedings taken against you.*

9. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) Any current or future employer.*
 - b) Any educational establishment.*
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The period of this order is for six months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 21 September 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Ms Howard has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Ms Howard's engagement with the NMC.
- An indication of her future intentions in relation to her nursing career.
- Detailed update of Ms Howard's current reflection and learning gained from any skills or training.
- Testimonials and/or references from any work paid or otherwise.

This will be confirmed to Ms Howard in writing.

That concludes this determination.